



## City Council Staff Report

Date: May 3, 2017

CONSENT CALENDAR

Subject: APPROVAL OF RIGHT OF WAY ACQUISITION AGREEMENTS WITH GRANITE CONSTRUCTION COMPANY FOR ASSESSORS PARCEL NUMBER (APN) 669-100-001 FOR THE INDIAN CANYON DRIVE WIDENING & BRIDGE REPLACEMENT, CITY PROJECT NO. 01-11, FEDERAL AID PROJECT NO. BRLO 5282 (017)

From: David H. Ready, City Manager

Initiated by: Engineering Services Department

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### SUMMARY

The City has successfully completed the right-of-way acquisition process with Granite Construction Company, a California Corporation, for the property identified by Assessor's Parcel Number (APN) 669-100-001 to obtain right-of-way and a temporary construction easement required to construct improvements associated with the Indian Canyon Drive Widening & Bridge Replacement, City Project No. 01-11, Federal Aid Project No. BRLO 5282 (017), (the "Project"). This action will approve and authorize the City Manager to enter into the agreements allowing for acquisition of right-of-way and a temporary construction easement for the Project across APN 669-100-001.

### RECOMMENDATION:

1. Approve a Right-of-Way Agreement for Acquisition of Real Property Interest and Escrow Instructions, Agreement (A\_\_\_\_), in the amount of \$23,258 with Granite Construction Company, a California Corporation, for acquisition of 1,633 square feet of right-of-way and 21,595 square feet of slope easement across the property identified as APN 669-100-001; and
2. Approve a Temporary Construction Easement Agreement, (A\_\_\_\_), in the amount of \$44,960.40 with Granite Construction Company, a California Corporation, for rental for a period of 5 years of 59,947 square feet of a portion of the property identified as APN 669-100-001; and
3. Authorize the City Manager to execute all necessary documents, open escrow, and pay for associated escrow and title costs associated with the right-of-way acquisitions.

ITEM NO. 1.H.

### STAFF ANALYSIS:

After the City initiated the Indian Canyon Drive / Interstate 10 Interchange Project ("I-10 Project") in 2000, the Public Works and Engineering Department ("Department") turned its attention to widening Indian Canyon Drive through the Whitewater River up to Garnet Avenue to correspond with the ultimate 6-lane roadway to be constructed from Garnet Avenue over Interstate 10 as part of the I-10 Project. In pursuit of this goal, the Department applied for and obtained federal grants for widening Indian Canyon Drive, from the Union Pacific Railroad ("UPRR") bridge to Garnet Avenue, from 2 lanes to 6 lanes. The Department was initially successful in being awarded a federal grant of \$4,286,000 from the Highway Bridge Program ("HBP"), administered through the California Department of Transportation ("Caltrans"). Subsequently, as the scope of the Project has changed from widening of the existing UPRR bridge to complete replacement of the UPRR bridge, and the total cost of the Project has increased, the Department has successfully increased the total federal funding for the Project to \$17.4 Million.

In May 2001, the Department obtained approval from Caltrans to proceed with the preliminary engineering phase for this project. Subsequently, the City Council awarded a contract to Dokken Engineering on March 20, 2002, for professional environmental and engineering design services, and right-of-way acquisition services, for the Project.

The Project extends through environmentally sensitive habitat occupied by certain protected species, and environmental analysis and approvals of the Project by resource agencies occurred concurrently as the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) was being developed and approved. Following final approvals of the CVMSHCP by the resource agencies in 2008, which lists the Project as a "Covered Project", the City obtained final environmental approvals for the Project from Caltrans and resources agencies in 2009.

Following environmental approvals of the Project, Dokken Engineering has continued with the final design and right-of-way acquisition phases. The Project will require the acquisition of rights-of-way from various parcels, as shown in Figure 1.

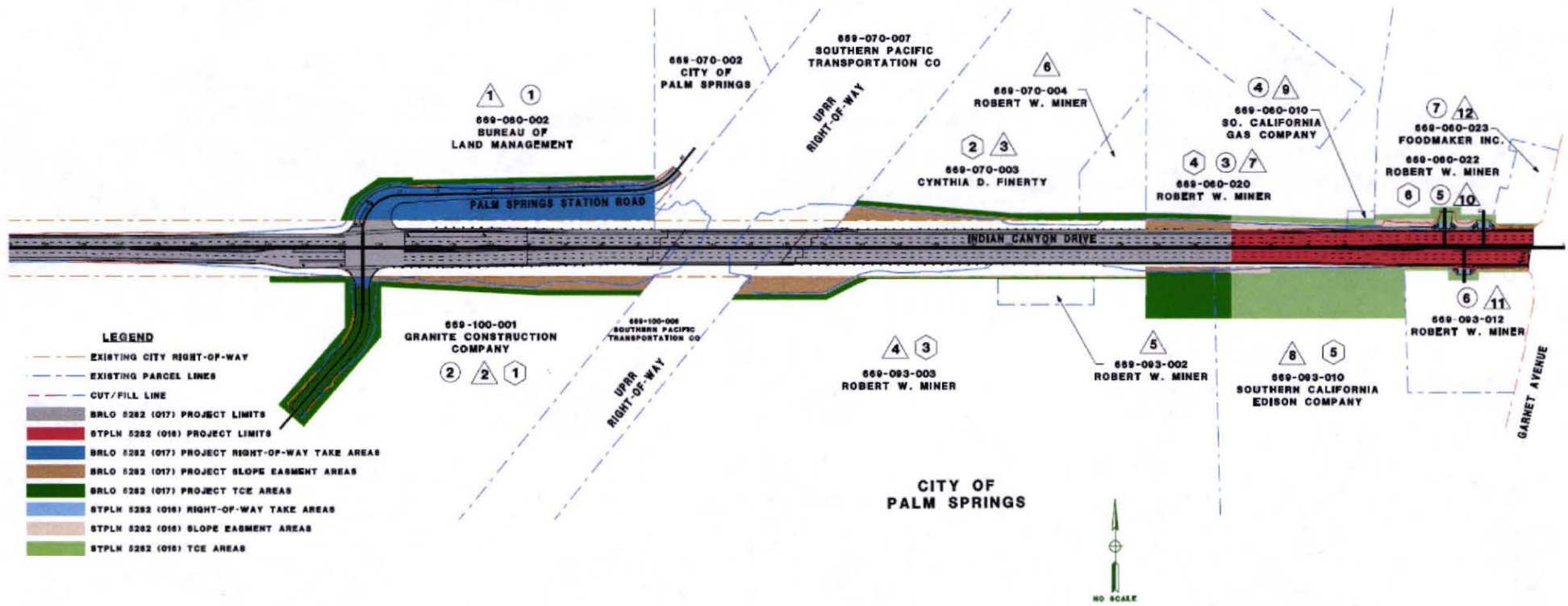










Figure 1

At its Closed Session meeting of October 21, 2015, the City Council received a report from staff on the fair market value of the required rights-of-way for the Project, and directed staff to proceed with final negotiations and acquisition with the affected property owners. The City has completed negotiations with the owner of the property identified by APN 669-100-001 for acquisition of right-of-way and temporary construction easement as shown in Figures 2.

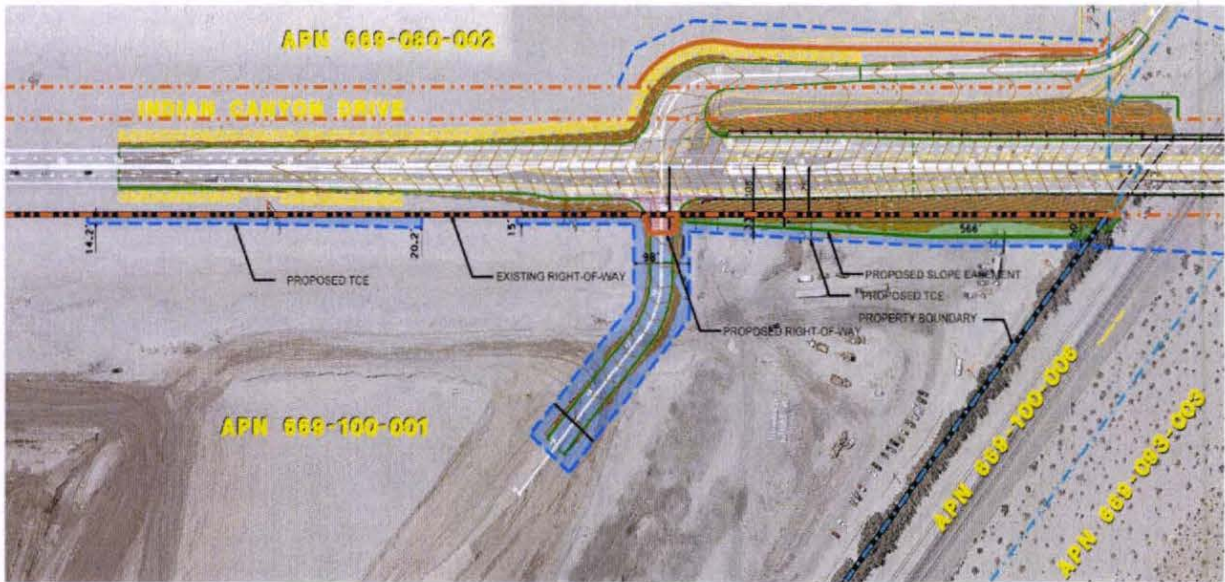
**APN# 669-100-001; Granite Construction Company**

**APN: 669-100-001**  
OWNER: GRANITE CONSTRUCTION COMPANY

**LEGEND:**

-  EXISTING PARCEL
-  EXISTING RIGHT-OF-WAY/  
PROPERTY BOUNDARY
-  PROPOSED RIGHT-OF-WAY/  
PROPERTY BOUNDARY
-  PROPOSED TEMPORARY  
CONSTRUCTION EASEMENT
-  PROPOSED ROADWAY
-  PROPOSED SLOPE EASEMENT
-  TEMPORARY CONSTRUCTION  
EASEMENT AREA
-  SLOPE EASEMENT AREA

- **Right of Way: 23,228 Square Feet**
- **Temporary Construction Easement: 59,947 Square Feet**



**Figure 2**

Right-of-way negotiations have concluded for acquisition of the permanent right-of-way and temporary construction easement across the property identified by APN 669-100-001, and agreements are recommended for approval whereby the City will acquire 23,228 square feet of permanent right-of-way in the amount of \$23,258 and rent the required 59,947 square feet of the property at a cost of \$44,960.40 for a period terminating on July 1, 2022.

The agreements to acquire the permanent right-of-way and temporary construction easement are included as **Attachment 1** of this report.

**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 November 4, 2009, the City Council adopted Resolution No. 22620, adopting and ordering the filing of a Mitigated Negative Declaration for the Project. Subsequently, on November 5, 2009, 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 2**.

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 September 24, 2009, 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 under Section 6005 of 23 U.S.C. 327. A copy of the NEPA Categorical Exclusion issued by Caltrans is included as **Attachment 3**.

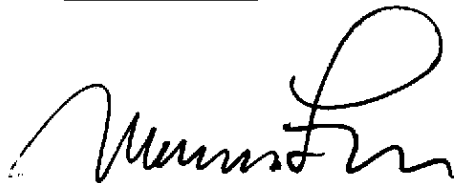
**FISCAL IMPACT:**

The costs to acquire the required right-of-way and temporary construction easement across the property identified by APN 669-100-001 for the Project is \$68,218.40 plus associated escrow and title fees of approximately \$5,000. Funding for the Project is made possible by the federal HBP grant which will cover 88.53% of all eligible project costs. Regional and Local Measure A funds will pay for the 11.47% matching funds at a 75%/25% ratio. Sufficient funding is available for payment of \$68,218.40 for the required right-of-way and temporary construction easement from the following accounts:

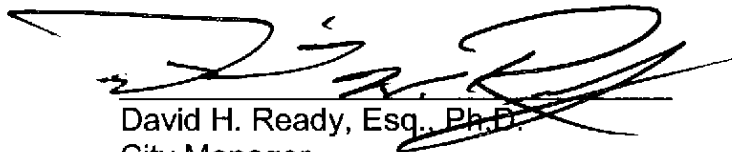
Capital Project Fund, Account No. 261-4491-50196; \$60,393.75  
Regional Measure A, Account No. 134-4497-50196; \$5,868.49  
Local Measure A, Account No. 134-4498-50196; \$1,956.16

Applicable escrow fees will be funded from these accounts accordingly.

SUBMITTED:



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



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

Attachments:

1. Agreements (2)
2. CEQA Notice of Determination
3. NEPA Categorical Exclusion

# **ATTACHMENT 1**

# **ATTACHMENT 2**



Project: Indian Cyn. Drive Widening and Bridge Replacement @ UPRR  
Project No.: Federal Project No. BRLO 5282 (017), City Project No. 01-11  
APN: 669-100-001

**RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY  
INTEREST AND ESCROW INSTRUCTIONS**

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THIS RIGHT-OF-WAY AGREEMENT FOR ACQUISITION OF REAL PROPERTY INTEREST AND ESCROW INSTRUCTIONS ("Agreement"), dated and entered into for solely for reference purposes as of April 17, 2017, by and between the CITY OF PALM SPRINGS, a California charter city and municipal corporation ("Buyer") and Granite Construction Company, a California Corporation ("Seller"), with reference to the following facts:

**RECITALS**

A. Seller is the owner of certain real property comprised of approximately twenty-three thousand two hundred twenty-eight (23,228) square feet, located in the City of Palm Springs (the "City"), the County of Riverside (the "County"), State of California (the "State"), which is a portion of Assessor's Parcel No. 669-100-001, more particularly described on Exhibit A-1 and A-2 and shown on Exhibit B-1 and B-2 attached hereto (the "Easement Area").

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller an easement to the Easement Area, in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by Seller, Buyer and Seller (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, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, an easement and right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, and an easement and right-of-way for earth embankment slopes, together with the right to construct and maintain such slopes and embankments and facilities incidental thereto, over, under, along and across all that real property in the Easement Area as such area, scope and use is more particularly described in the Grant of Right of Way and Grant of Slope Easement attached hereto as Exhibit C-1 and C-2 (the "Easement"), which Exhibits A-1 and A-2 and B-1 and B-2 attached hereto that define the Easement Area shall be made a part of.

1.2. Purchase Price. The purchase price ("Purchase Price") for the Easement, Slope Easement, and Site Improvements shall be **Twenty Three Thousand Two Hundred Fifty-Eight Dollars and No Cents (\$23,258)** payable in cash at the Close of Escrow as defined and provided for herein.

1.3. Construction Contract Work.

As part of the construction of the Indian Canyon Drive Widening and Bridge Replacement @ UPRR (Project No.: Federal Project No. BRLO 5282 (017), City Project No. 01-11) (the "Project"), the City will remove or caused to be removed, the following improvements located within the Easement Area: two steel posts, 240 SF of North Block Wall, 320 SF of South Block Wall, and 760 SF of gravel driveway, and replace the two steel post in kind 240 SF of North Block Wall and 320 SF of South Block Wall to be replaced with Seller and Buyer approved design and materials. 760 SF of gravel driveway to be replaced with concrete pavement. Additionally, as part of the Project construction, landscaping will be removed and replaced with Project approved landscaping.

1.4. Maintenance and Repair.

Following completion of the improvements identified in 1.3, Seller, on behalf of itself and its successors and assignees in interest, agree to maintain and repair such improvements as outlined in section 1.3 of this Agreement. All improvements as outlined in section 1.3 will be on the Sellers remaining property outside of the Easement Area.

2. ESCROW AND CLOSING.

2.1. Opening of Escrow. Within fourteen (14) business days after execution of this Agreement by the last of Seller or Buyer, Buyer shall open an escrow (the "Escrow") with Lawyers Title & Escrow, 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 Buyer and Seller 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 such escrow instruction is expressly identified and set forth in writing by mutual consent of Buyer and Seller. In the event there is an inconsistency or 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, Buyer agrees to pay all of Seller's and Buyer's usual fees, charges and costs in connection with and 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 ALTA 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 extended by mutual agreement. As used in this Agreement, the "**Close of Escrow**" shall mean the date a Grant Right of Way and Slope Easement, as provided in Section 2.4.2(a) hereof ("**Right of Way and Slope Easement**"), is recorded in the Official Records of the County.

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

(a) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Seller setting forth the Purchase Price and any adjustments thereto;

(b) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement;

(c) No event or circumstance shall have occurred, which, in the sole opinion of Buyer, would make any of Seller'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 Seller set forth in Sections 3.4 and 4.1 of this Agreement;

(d) 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 Buyer, would render the Easement Area unsuitable for Buyer's intended use, materially increase the cost, or cause a material delay in the schedule for the development of the Easement Area;

(e) The Title Company shall be committed to issue to Buyer, as of the Closing Date, the Title Policy (defined below) covering the Easement Area, subject only to the Permitted Exceptions.

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

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

**2.3.2 Conditions of Seller for Close of Escrow.** The Close of Escrow and Seller's obligation to sell and convey the Easement are subject to the satisfaction of the following conditions or Seller's written waiver of such conditions on or before the Closing Date. Seller 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) The Purchase Price shall have been adjusted in accordance with this Agreement and a closing statement duly executed by Buyer setting forth the Purchase Price and any adjustments thereto;

(b) Buyer shall have performed all obligations to be performed by Buyer pursuant to this Agreement;

(c) No event or circumstance shall have occurred which would make any of Buyer'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 Buyer set forth in Section 4.2 of this Agreement.

2.3.3 Waiver of a Condition Excuses 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, such waiver shall excuse performance by the party whose performance is required to satisfy such condition.

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

2.4.1 Buyer's Deposits. Buyer shall deposit:

(a) The Purchase Price together with Buyer's escrow and other cash charges; and

(b) A Certificate of Acceptance for the Right of Way and Slope Easement executed by the City Clerk of the City of Palm Springs (See, Exhibit C-1 and C-2).

2.4.2 Seller's Deposits. Seller shall deposit:

(a) The Right of Way and Slope Easement in the form of Exhibit C-1 and C-2 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 Seller 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 Seller.

2.4.3 Deposits of Additional Instruments. Seller and Buyer 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, Seller fails to deposit with Escrow Holder the executed Affidavit of Non-foreign Taxpayer Status which exempts Seller from the withholding requirements of Section 1445 of the

Internal Revenue Code of 1986, as amended, and the regulations thereunder, Seller 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, Seller fails to deposit with Escrow Holder any applicable tax document which exempts Buyer from California withholding requirements, if any, Seller 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 Buyer 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 Right of Way and Slope Easement 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 Right of Way and Slope Easement to Buyer; (iv) distribute to Seller the Purchase Price; and (v) deliver to Buyer the Title Policy covering the Easement Area subject only to the Permitted Exceptions, the Affidavit of Non-foreign Status, and the applicable California withholding exemption form, if any.

**2.5.3 Real Estate Taxes.** Real estate taxes for the year of closing and annual municipal or special district assessments (on the basis of the actual fiscal tax years for which such taxes are assessed) will be apportioned as of the Close of Escrow. If the real estate tax bill for the real estate tax year in which the closing occurs has not been issued on or before the day prior to the Close of Escrow, the apportionment of real estate taxes will be computed based upon the most recent tax bill available, and then reconciled after the Close of Escrow based on the actual taxes due. If, on the day prior to the Close of Escrow, bills for the real estate taxes imposed for the real estate tax year in which Closing occurs have been issued but have not been paid, such taxes shall be paid prorated through the Close of Escrow. Seller 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 as Buyer is a public agency exempt from payment of such taxes. Buyer further agrees to cooperate with Seller 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 other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then 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, Buyer 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 three (3) business days after the Opening of Escrow, Lawyers Title & Escrow (the "**Title Company**") will furnish Buyer and Seller with an updated Title Commitment on the Easement Area together with legible copies of all underlying documents referenced therein 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. Buyer 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 Buyer'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 Buyer will be deemed disapproved. All such exceptions and other matters disapproved by Buyer are referred to herein as "**Disapproved Exceptions**". It shall be the sole responsibility of Buyer to work with the Title Company to remove any Disapproved Exceptions, and if unsuccessful shall either purchase the Easement subject to the Disapproved Exceptions or terminate the Agreement.

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 Buyer pursuant to this Section 3.1.

3.2. Title Policy. Buyer'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 Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At Buyer's option, Buyer may require an ALTA Extended Coverage Owner's Policy instead of the Standard Coverage Policy provided that Buyer pays any additional premium on account thereof. The form of title policy selected by Buyer shall be referred to herein as the "**Title Policy**".

3.3. Possession and Use. It is mutually understood and agreed by and between the parties hereto that the right of possession and use of the Easement Area and Easement by the Buyer, including the right to remove and dispose of improvements, shall commence upon the Close of Escrow. The Purchase Price includes, but is not limited to, full payment for such improvements and possession and use of the Easement Area upon the Close of Escrow.

3.4. Seller's Covenant Not to Further Encumber the Easement Area. Seller 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 any

portion thereof, or enter into any agreement to do so, so long as this Agreement is in force. Seller shall timely discharge, prior to the Closing, any and all obligations relating to work performed on or conducted at or materials delivered to or for the Easement Area from time to time by Seller, or at Seller's direction or on its behalf, in order to prevent the filing of any claim or mechanic's lien with respect to such work or materials.

#### 4. REPRESENTATIONS, WARRANTIES AND COVENANTS.

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

4.1.1 Seller's Authority. Seller 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 Seller, and upon delivery to and execution by Buyer, shall be a valid and binding agreement of Seller.

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 Seller shall not enter into any such contracts affecting possession or occupancy of the Easement Area during the terms of this Agreement without the prior consent of Buyer.

4.1.3 No Liens and Subordination. Seller warrants that at the time of the Close of Escrow, Seller shall have caused any mechanics', laborers', materialmen's or service liens and charge of any deed of trust that encumbers the Easement Area to be subordinated to the rights of Buyer under the terms of the Easement.

4.1.4 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Seller 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 Seller contained in this Agreement, are conditions precedent to the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the representations or warranties in this Agreement untrue.

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

4.2.1 Buyer's Authority. Buyer 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 Buyer and, upon delivery to and execution by Seller, shall be a

valid and binding Agreement of Buyer.

4.2.2 No Untrue Statements or Omissions of Fact. Each of the representations and warranties made by Buyer 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 Buyer contained in this Agreement, are conditions precedent to the Close of Escrow. Buyer shall notify Seller immediately of any facts or circumstances which are contrary to the representations and warranties contained in this Agreement.

4.3. Mutual Indemnity. Seller and Buyer 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 Buyer further agrees to indemnify and hold harmless Seller from any liability arising out of Buyer's operations under this Agreement and agrees to assume responsibility for any damages proximately caused by reason of Buyer's operations under this Agreement and Buyer will, at its option, either repair or pay for such damage.

5. CONDEMNATION. Seller and Buyer acknowledge that this transaction is a negotiated settlement *in lieu* of condemnation, and Seller 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, Seller (or Seller's tenant) is served with a Summons and Complaint in Eminent Domain in which Seller (or Seller's tenant) is a named defendant, upon the Close of Escrow, Seller agrees and consents to Buyer taking a default in the action. Moreover, the total compensation to be paid by Buyer to Seller is for all of Seller's interest in the Easement Area or as described and set forth in the Easement and any rights which exist or may arise out of the acquisition of the Easement for public purposes, including without limitation, Seller's interest in the land and any improvements to the land, severance damages, any alleged pre-condemnation damages, loss of business goodwill (if any), costs, interest, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Easement Area or Easement by the Buyer. The compensation paid under this Agreement does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which Seller may be entitled to receive, if any. Relocation assistance, if any, will be handled via separate Agreement.

6. BROKERS. Seller and Buyer 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 purchase and sale of the Easement and that no commissions or finder's fees are payable in connection with this transaction. Buyer and Seller 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 received 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. The parties waive expressly each and all provisions of California Civil Code Section 1654, which provides: "IN CASES OF UNCERTAINTY NOT REMOVED BY THE PRECEDING RULES, THE LANGUAGE OF A CONTRACT SHOULD BE INTERPRETED MOST STRONGLY AGAINST THE PARTY WHO CAUSED THE UNCERTAINTY TO EXIST."

7.9. Relationship of Parties. The parties agree that their relationship is that of Seller and Buyer, 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 reasonable attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

7.11. Assignment. Neither Seller nor Buyer 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. Federal Express), delivered by mail or sent by registered or certified mail, return receipt requested, or sent via facsimile, as follows:

If to Buyer, 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 Seller, to: Mr. Brad Williams  
Granite Construction Company  
38000 Monroe St  
Indio, CA 92203

With a copy to: Granite Construction Company  
PO Box 50085  
Watsonville, CA 95077  
Attn: General Counsel

If to Escrow Holder, to: Kimberly Rogers  
Lawyers Title & Escrow  
777 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Facsimile No.: (866) 350-3317  
Telephone No.: (760) 327-6523

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 facsimile 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 facsimile 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 Buyer or Seller 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 Right of Way and Slope Easement, 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 Buyer's City Council. If this Agreement remains unapproved by the Buyer's City Council sixty (60) days following the date first written above, then the parties will have no further obligation under this Agreement. If Buyer's 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.

BUYER

SELLER

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

Granite Construction Company, a California Corporation

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

By:   
\_\_\_\_\_  
Chris Miller, Executive Vice President

Attest:

\_\_\_\_\_  
James Thompson  
City Clerk  
Dated:

Approved as to form by:

WOODRUFF, SPRADLIN & SMART

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

Dated:

**Exhibit List**

- Exhibit A-1 and A-2 -- Legal Description of the Right of Way and Slope Easement
- Exhibit B-1 and B-2 -- Depiction of the Right of Way and Slope Easement
- Exhibit C-1 and C-2 -- Form of Right of Way and Slope Easement
- Exhibit D -- Affidavit of Non-foreign Taxpayer Status

**ACCEPTANCE BY ESCROW HOLDER:**

          LAWYERS TITLE & ESCROW           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: \_\_\_\_\_

By:                           LAWYERS TITLE & ESCROW                            
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

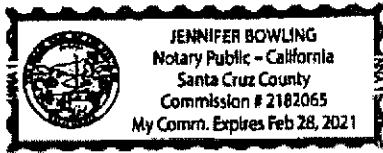
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Santa Cruz )  
On April 17, 2017 before me, Jennifer Bowling, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Chris Miller  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document** Right of Way Agreement Acquisition of Real Property Interest and Escrow Instr.

Title or Type of Document: APN # 669-100-001 Document Date: 4/17/2017

Number of Pages: N/A Signer(s) Other Than Named Above: N/A

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

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

EXHIBIT "A-1"  
RIGHT-OF-WAY EASEMENT  
APN 669-100-001

THOSE PORTIONS OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG SAID CENTER LINE OF INDIAN CANYON DRIVE SOUTH 00°19'08" WEST 128.31 FEET TO AN ANGLE POINT IN THE SOUTHERLY LINE OF AN OVERHEAD CROSSING EASEMENT IN FAVOR OF THE COUNTY OF RIVERSIDE RECORDED OCTOBER 22, 1952 IN BOOK 1409, AT PAGES 566 AND 575 OF OFFICIAL RECORDS; THENCE ALONG SAID SOUTHERLY LINE SOUTH 50°53'07" EAST 96.23 FEET TO A LINE PARALLEL WITH AND DISTANT 75.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF SAID SECTION 23, SAID WESTERLY LINE ALSO BEING THE CENTER LINE OF SAID INDIAN CANYON DRIVE; THENCE ALONG SAID PARALLEL LINE SOUTH 00°19'08" WEST 747.79 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID PARALLEL LINE SOUTH 00°19'08" WEST 71.01 FEET;
2. THENCE LEAVING SAID PARALLEL LINE NORTH 72°10'42" EAST 27.07 FEET;
3. THENCE NORTH 00°19'08" EAST 55.96 FEET;
4. THENCE NORTH 75°14'39" WEST 26.56 FEET TO THE **TRUE POINT OF BEGINNING**.

AREA = 1,633 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE

*Michael A. Havener*

MICHAEL A. HAVENER  
PLS 7354

12-18-2015  
DATE





EXHIBIT "A-2"  
SLOPE EASEMENT  
APN 669-100-001

NORTHERLY SLOPE EASEMENT

THOSE PORTIONS OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG SAID CENTER LINE OF INDIAN CANYON DRIVE SOUTH 00°19'08" WEST 128.31 FEET TO AN ANGLE POINT IN THE SOUTHERLY LINE OF AN OVERHEAD CROSSING EASEMENT IN FAVOR OF THE COUNTY OF RIVERSIDE RECORDED OCTOBER 22, 1952 IN BOOK 1409, AT PAGES 566 AND 575 OF OFFICIAL RECORDS; THENCE ALONG SAID SOUTHERLY LINE SOUTH 50°53'07" EAST 96.23 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT 'A' AND A LINE PARALLEL WITH AND DISTANT 75.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF SAID SECTION 23, SAID WESTERLY LINE ALSO BEING THE CENTER LINE OF SAID INDIAN CANYON DRIVE, SAID POINT BEING THE **TRUE POINT OF BEGINNING**;

1. THENCE ALONG SAID PARALLEL LINE SOUTH 00°19'08" WEST 747.79 FEET;
2. THENCE LEAVING SAID PARALLEL LINE SOUTH 75°14'39" EAST 26.56 FEET;
3. THENCE NORTH 00°19'08" EAST 20.65 FEET;
4. THENCE NORTH 75°14'39" WEST 13.84 FEET;
5. THENCE NORTH 3°26'21" EAST 416.60 FEET;
6. THENCE NORTH 0°19'08" EAST 286.20 FEET TO THE SOUTHWESTERLY LINE OF A STRIP OF LAND 200 FEET WIDE, GRANTED TO THE SOUTHERN PACIFIC RAILROAD COMPANY, BY ACT OF CONGRESS, APPROVED ON JULY 27, 1866 AND APPROVED ON MARCH 3, 1871 AND AS SET FORTH IN THE PATENT FROM THE UNITED STATES OF AMERICA TO THE SOUTHERN PACIFIC RAILROAD COMPANY RECORDED JULY 31, 1905 IN BOOK 3, PAGE 228 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;
7. THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 50°53'07" WEST 44.91 FEET TO THE **TRUE POINT OF BEGINNING**.

SOUTHERLY SLOPE EASEMENT

**BEGINNING** AT SAID POINT 'A', THENCE ALONG SAID PARALLEL LINE SOUTH 00°19'08" WEST 818.81 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE CONTINUING ALONG SAID PARALLEL LINE SOUTH 00°19'08" WEST 65.13 FEET;
2. THENCE LEAVING SAID PARALLEL LINE SOUTH 89°40'52" EAST 1.05 FEET
3. THENCE NORTH 5°17'23" EAST 33.26 FEET;
4. THENCE NORTH 33°16'19" EAST 18.52 FEET;
5. THENCE NORTH 72°10'42" EAST 12.34 FEET;

EXHIBIT "A-2"  
SLOPE EASEMENT  
APN 669-100-001

6. THENCE NORTH 00°19'10" EAST 21.05 FEET;
7. THENCE SOUTH 72°10'42" WEST 27.07 FEET TO THE TRUE POINT OF BEGINNING.

AREA = 21,595 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 12-18-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



# EXHIBIT "B-1"

SW 1/4 OF

NW 1/4  
SEC. 23

T. 3 S., R. 4 E.

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

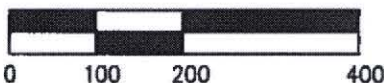
SEC. 22

T. 3 S., R. 4 E.

**APN 669-100-001 NON-PLOTTABLE EASEMENTS**

A PUBLIC UTILITY EASEMENT IN FAVOR OF  
PACIFIC TELEPHONE AND TELEGRAPH CO. REC.  
1/23/1912 IN BK. 344, PG. 227 OF DEEDS.

A PERMANENT TELECOMMUNICATIONS  
EASEMENT IN FAVOR OF VARIOUS REC.  
8/29/2013 AS DOC. NO. 2013-0423943 O.R.  
VARIOUS PRIVATE EASEMENTS REC. 7/26/2013  
AS DOC. NO. 2013-0360350 O.R.



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

**LEGEND**

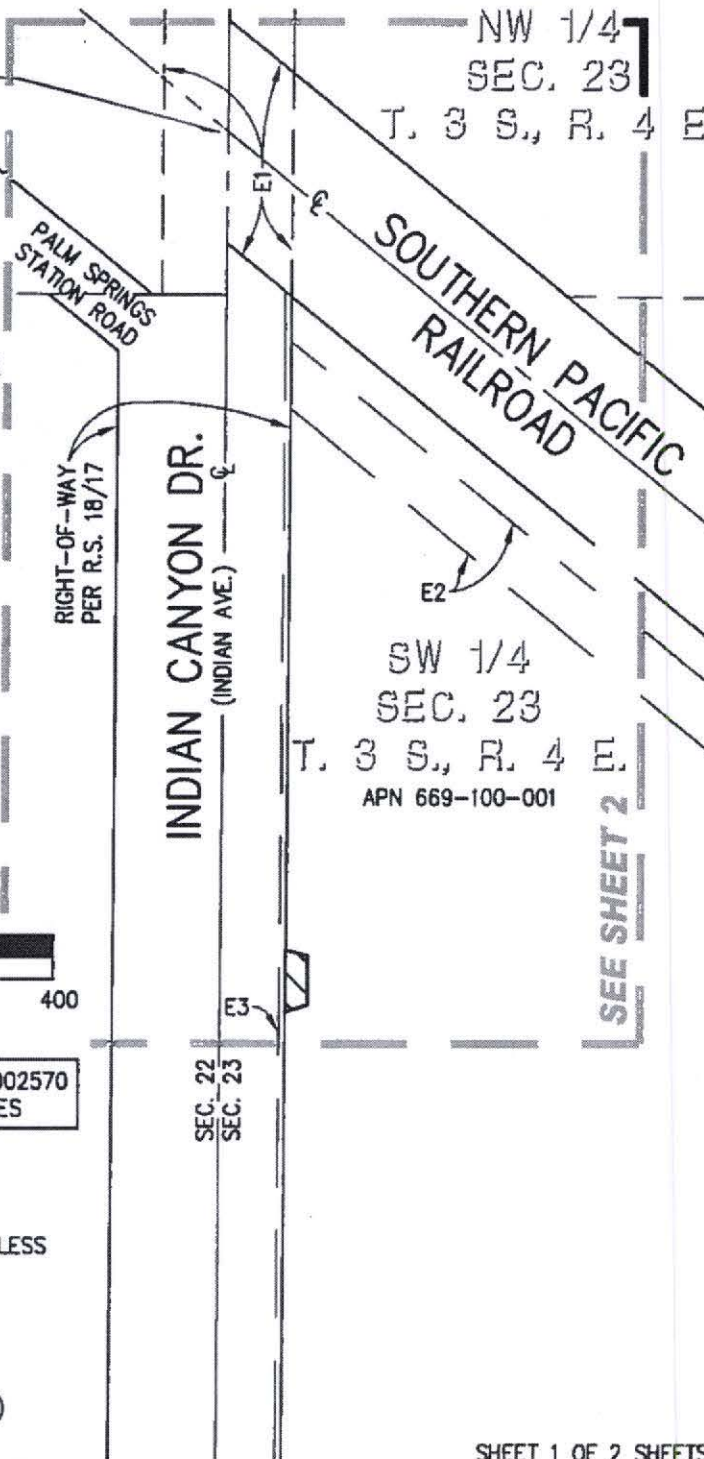


RIGHT-OF-WAY EASEMENT  
AREA = 1,633 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

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

E# PLOTTED EASEMENT (SEE SHEET 2)



SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.  
APN 669-100-001

SEE SHEET 2

SHEET 1 OF 2 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 200'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

# PLOTTED EASEMENTS

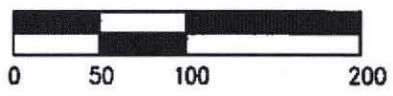
- E1 OVERHEAD CROSSING EASEMENT IN FAVOR OF THE COUNTY OF RIVERSIDE REC. 10/22/1952 IN BK. 1409, PG. 566 O.R. AND BK. 1409, PG. 575 O.R.
- E2 UTILITY EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON REC. 04/05/2006 AS DOC. NO. 2006-0244157 O.R.
- E3 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA ELECTRIC POWER CO. REC. 11/16/1948 IN BK. 1027, PG. 213 O.R. NO WIDTH GIVEN.

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

SW 1/4 OF  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

SOUTHERN PACIFIC  
RAILROAD

SEC. 22  
T. 3 S., R. 4 E.



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 00°19'08" W	71.01'
L2	N 72°10'42" E	27.07'
L3	N 00°19'08" E	55.96'
L4	N 75°14'39" W	26.56'

## LEGEND

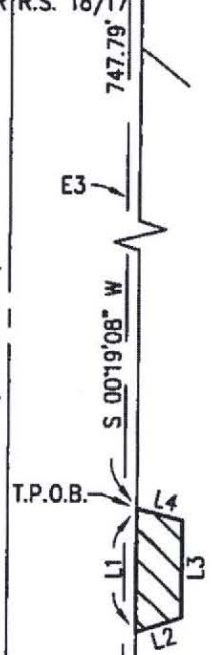
- RIGHT-OF-WAY EASEMENT AREA = 1,633 SQ. FT., MORE OR LESS
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- E# PLOTTED EASEMENT (SEE ABOVE)

PALM SPRINGS  
STATION ROAD

125' 75'  
RIGHT-OF-WAY PER R.S. 18/17



INDIAN CANYON DR.  
(INDIAN AVE.)



SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.  
APN 669-100-001

SHEET 2 OF 2 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

# EXHIBIT "B-2"

SW 1/4 OF  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

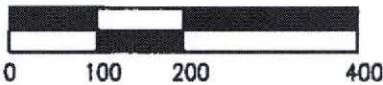
P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

SEC. 22  
T. 3 S., R. 4 E.

**APN 669-100-001 NON-PLOTTABLE EASEMENTS**

A PUBLIC UTILITY EASEMENT IN FAVOR OF  
PACIFIC TELEPHONE AND TELEGRAPH CO. REC.  
1/23/1912 IN BK. 344, PG. 227 OF DEEDS.

A PERMANENT TELECOMMUNICATIONS  
EASEMENT IN FAVOR OF VARIOUS REC.  
8/29/2013 AS DOC. NO. 2013-0423943 O.R.  
VARIOUS PRIVATE EASEMENTS REC. 7/26/2013  
AS DOC. NO. 2013-0360350 O.R.



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

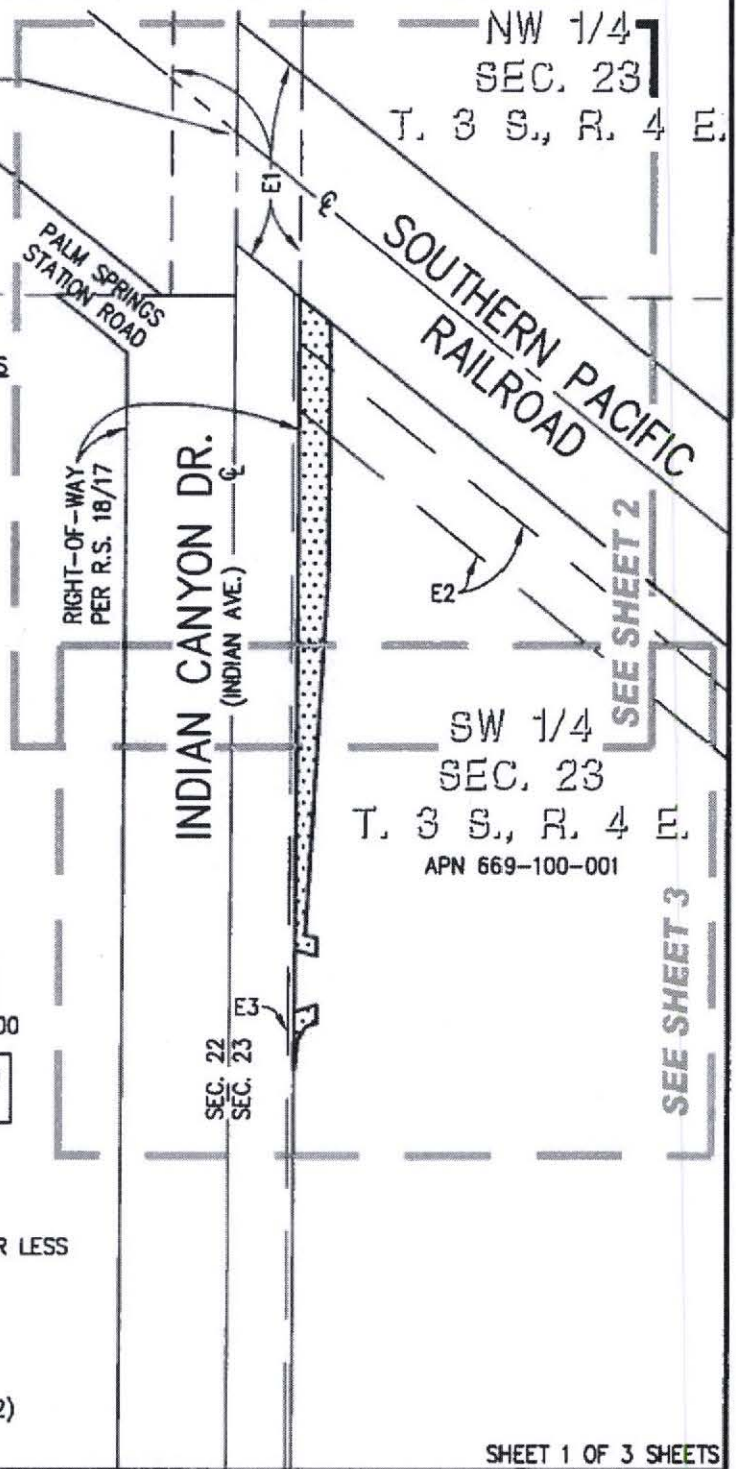
**LEGEND**

SLOPE EASEMENT (SLOPE)  
AREA = 21,595 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

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

E# PLOTTED EASEMENT (SEE SHEET 2)



SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.  
APN 669-100-001

SHEET 1 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 200'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

# PLOTTED EASEMENTS

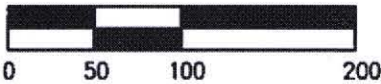
- E1 OVERHEAD CROSSING EASEMENT IN FAVOR OF THE COUNTY OF RIVERSIDE REC. 10/22/1952 IN BK. 1409, PG. 566 O.R. AND BK. 1409, PG. 575 O.R.
- E2 UTILITY EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON REC. 04/05/2006 AS DOC. NO. 2006-0244157 O.R.
- E3 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA ELECTRIC POWER CO. REC. 11/16/1948 IN BK. 1027, PG. 213 O.R. NO WIDTH GIVEN.

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

SW 1/4 OF  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

SOUTHERN PACIFIC  
RAILROAD

SEC. 22  
T. 3 S., R. 4 E.



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 50°53'07" W	44.91'
L2	N 03°26'21" E	416.60'

## LEGEND

SLOPE EASEMENT (SLOPE)  
AREA = 21,595 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

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

E# PLOTTED EASEMENT (SEE ABOVE)

125' 75'  
RIGHT-OF-WAY PER R.S. 18/17



INDIAN CANYON DR.  
(INDIAN AVE.)

SEE SHEET 3

SHEET 2 OF 3 SHEETS

SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

APN 669-100-001

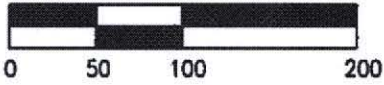
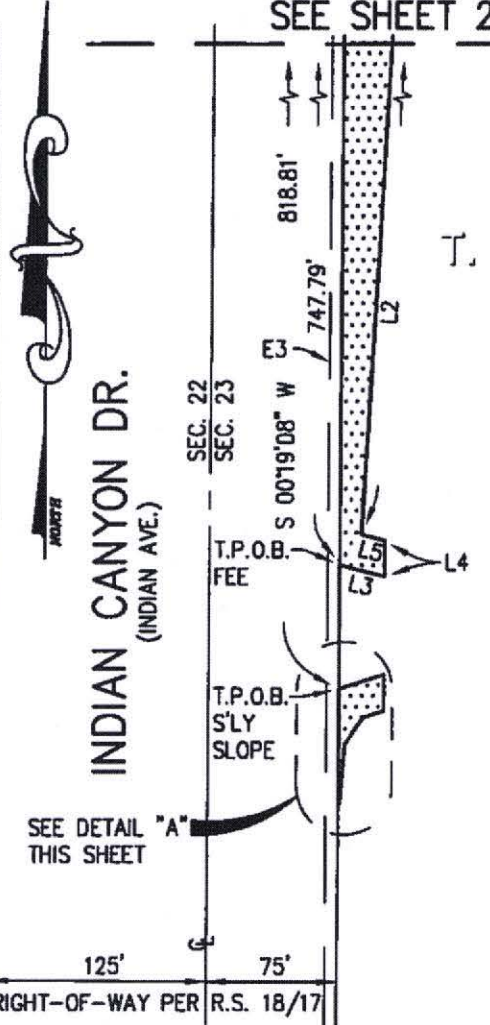
REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

SEE SHEET 2

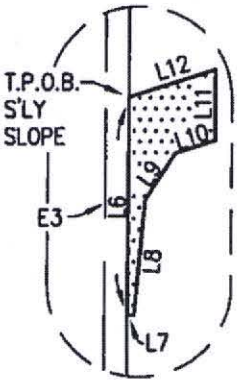
LINE TABLE		
LINE	BEARING	LENGTH
L2	N 03°26'21" E	416.60'
L3	N 75°14'39" W	26.56'
L4	N 00°19'08" E	20.65'
L5	N 75°14'39" W	13.84'
L6	S 00°19'08" W	65.13'
L7	S 89°40'52" E	1.05'
L8	N 05°17'23" E	33.26'
L9	N 33°16'19" E	18.52'
L10	N 72°10'42" E	12.34'
L11	N 00°19'10" E	21.05'
L12	S 72°10'42" W	27.07'

SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.  
APN 669-100-001

SEC. 22 T. 3 S., R. 4 E.



MULTIPLY DISTANCE BY 1.00002570 TO OBTAIN GROUND DISTANCES



DETAIL "A"  
NOT TO SCALE

SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

**LEGEND**

- SLOPE EASEMENT (SLOPE)  
AREA = 21,595 SQ. FT., MORE OR LESS
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- E# PLOTTED EASEMENT (SEE SHEET 2)

SHEET 3 OF 3 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

**EXHIBIT "C-1"**

**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 RIGHT-OF-WAY  
(INDIAN CANYON DRIVE)**

**APN #669-100-001**

For a valuable consideration, receipt of which is hereby acknowledged, **Granite Construction Company, a California Corporation**, (hereinafter "Grantor"), hereby GRANTS to the **CITY OF PALM SPRINGS, a California charter city and municipal corporation**, (hereinafter "Grantee"), right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, in, on, under, over and across the real property in the City of Palm Springs, Riverside County, California, more particularly described on **Exhibit "A"** and shown on **Exhibit "B"** attached hereto and incorporated herein by this reference.

**GRANTOR:**

**Granite Construction Company, a  
California Corporation**

Dated: \_\_\_\_\_

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



**EXHIBIT "C-2"**

**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 DEED - SLOPE EASEMENT**

**APN #669-100-001**

For a valuable consideration, receipt of which is hereby acknowledged, **Granite Construction Company, a California Corporation**, (hereinafter "Grantor"), hereby **GRANTS** to the **CITY OF PALM SPRINGS, a California charter city and municipal corporation**, (hereinafter "Grantee"), an easement and right-of-way for earth embankment slopes, together with the right to construct and maintain such slopes and embankments and facilities incidental thereto, over, under, along and across all that real property situated in the City of Palm Springs, County of Riverside, State of California, described as follows:

See exhibit "A" attached hereto and exhibit "B" attached for illustration purposes

Reserving unto the Grantor herein, heirs and assigns the continued use of the above described parcel of land subject to the following conditions: The erecting of buildings, masonry walls, and other permanent structures; the planting of trees; the changing of the surface grade; and the installation of privately owned pipe lines shall be prohibited except by Encroachment Agreement issued by the City Engineer.

**GRANTOR: Granite Construction  
Company, a California Corporation**

Dated: \_\_\_\_\_

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

**EXHIBIT D**

DO NOT RECORD.  
DO NOT SEND  
TO IRS.

TRANSFeree (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: \_\_\_\_\_

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

PROJECT: Indian Canyon Drive Widening and  
Bridge Replacement @ UPRR  
Federal Project No. BRLO-5282(017)  
City Project No. 01-11

APN(s): 669-100-001

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT, (the "Agreement"), is hereby made this 17th day of April, 2017, by and between the **City of Palm Springs, a California charter city and municipal corporation**, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the "City" and/or "Grantee", **Granite Construction Company, a California Corporation**, hereinafter designated as the "Grantor". City/Grantee and Grantor are individually referred to as "Party" and are collectively referred to as the "Parties".

### RECITALS

A. Grantor is the owner of certain real property located in the City of Palm Springs, (the "City"), the County of Riverside, (the "County"), State of California, (the "State"), which is identified by Assessor Parcel Number(s) **669-100-001**, (referred to as the "Property").

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

C. Concurrently with the execution of this Agreement, the Parties have or are entering into Right-Of-Way Agreement For Acquisition Of Real Property Interest And Escrow Instructions (the ROW Agreement) pursuant to the terms and conditions of which Grantor grants to the City an easement and right-of-way for streets, highways, sanitary sewer lines, domestic water lines, public utilities, and other appurtenant uses, together with the right to construct, maintain, repair, operate, use, dedicate or declare the same for public use, and an easement and right-of-way for earth embankment slopes, together with the right to construct and maintain such slopes and embankments and facilities incidental thereto, over, under, along and across the real property as more particularly defined in the ROW Agreement. The ROW Agreement provides for an escrow for the collection, processing and recordation of documents as provided in the ROW Agreement (the "Escrow").

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

### AGREEMENT

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

1. Grantor hereby grants to City and its assignees, including its contractor(s), the right to enter upon and use the Easement Area (as Easement Area is identified and described in ¶ 2 below), representing a portion of Grantor's Property in the City of Palm Springs, Riverside County, State of California, (described as Assessor's Parcel Number(s) **669-100-001**) for all purposes necessary to facilitate and accomplish the construction and installation of various public street improvements ("Temporary Construction Easement") associated with the **Indian Canyon Drive Widening and Bridge Replacement @ UPRR, Federal Project No. BRLO-5282 (017), City Project No. 01-11 ("Project")**.
2. The Temporary Construction Easement, used during construction of the Project consists of approximately **59,947** square feet as described on the attached legal description, referenced as Exhibit "A", and shown on the attached map, referenced as Exhibit "B" (hereinafter the "**Easement Area**").
3. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this Agreement, the right of possession and use of the Easement Area by the Grantee, including the right to remove and dispose of improvements, shall commence on the close of escrow controlling this transaction, whichever occurs first, and the amount shown in Section 13 herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date. Temporary Construction Easement will expire on July 1, 2022 or the City's recordation of a Notice of Completion for the Project with the Riverside County Recorder's Office whichever occurs first, the Temporary Construction Easement granted herein shall be automatically surrendered by Grantee, and Grantee's interests thereto shall be automatically reverted to Grantor as if quitclaimed by Grantee, and shall no longer represent any title interest of or to Grantor's Property. Nevertheless, if requested by Grantor following such termination, City will execute a quitclaim deed confirming such termination.
4. The rights granted herein include the right to enter upon and to pass and repass over and along the Easement Area, and to deposit tools, implements and other materials thereon by City, its officers, agents and employees, and by persons or entities under contract with City, wherever and whenever necessary for the purpose of completing the Project in accordance with applicable laws. The City's activities may involve surveying, staking, excavation, grading, and other related uses that are reasonably required to construct the Project. City agrees not to damage Grantor's property in the process of performing such activities. Grantee will maintain ingress and egress of property throughout the course of construction, except during construction when a short-term closure will be necessary to coordinate driveway relocation efforts, but no more than four consecutive days.

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

If to Grantee, to:

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

If to Grantor, to:

Mr. Brad Williams  
Granite Construction Company  
38000 Monroe St  
Indio, CA 92203

With a mandatory copy to:

Granite Construction Company, a California Corporation  
PO Box 50085  
Watsonville, CA 95077  
Attn: General Counsel

7. To the fullest extent permitted by law, City (and its contractor) shall indemnify, defend and hold harmless Grantor, Granite Construction Incorporated and their officers, directors, employees and agents (collectively "Indemnitees" and individually an "Indemnatee") from any third party claims for all losses, liabilities, costs, damages, expenses, causes of action, suits, claims or judgments, including reasonable attorney's fees and costs, (collectively, "Claims") arising out of or alleged to arise out of or in connection with any act or omission of City, its employees, representatives, agents, suppliers, contractors or subcontractors pursuant to this Agreement or otherwise in connection with the construction and installation of various public street improvements as contemplated by the Temporary Construction Easement, provided, however, that the foregoing duty to indemnify and hold harmless the Grantor from and against any Claims shall not apply to any non-appealable judgments, resolutions or determinations to the extent caused by the active negligence or intentional misconduct of Grantor.

The City agrees, at its own expense, to keep in full force and effect for a period of

no less than two (2) years following the filing of the Notice of Completion (as provided in Article 3 of this Agreement), the following insurance and minimum limits: (i) commercial general liability insurance in an amount not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, property damage, personal injury, and products completed coverages; (ii) worker's compensation insurance in an amount not less than that required by applicable law; (iii) employer's liability coverage in an amount not less than \$1,000,000; and (iv) automobile liability insurance (including all owned, non-owned, and hired automobiles) in an amount not less than \$1,000,000 each occurrence with a combined single limit of not less than \$1,000,000. Within 5 days after execution of this Agreement, the City shall furnish a certificate of insurance (ACORD form 25S) from each insurance company providing coverage to the City showing that the required insurance coverage (including minimum limits) is in force, stating policy numbers, dates of expiration, deductible amounts applicable to each policy, and limits of liability thereunder, together with the endorsements required below, and further providing that the insurance will not be canceled, modified or changed until the expiration of at least thirty (30) calendar days after written notice of such cancellation, modification or change has been mailed by certified mail to Grantor. The Indemnitees shall be named, by endorsement (using standard ISO form CG 20 10 04 13 in combination with ISO form CG 20 37 04 13 or the equivalent, as determined by Grantor), as additional insureds on the commercial general liability insurance policy maintained by the City. Additionally, the commercial general liability and automobile liability policies shall be endorsed to stipulate that the insurance afforded the additional insureds shall apply as primary insurance without qualification and that any insurance maintained by the Indemnitees shall be in excess only and shall not be called upon to contribute with the insurance of the City. All insurance carriers providing coverage under this paragraph 7 must have an A.M. Best insurance rating of no less than A- / IX. The City for itself and on behalf of its insurers hereby waives and releases the additional insureds from liability for all claims which are covered by said insurance. The City shall obtain a waiver of any subrogation right that any of its insurers may acquire against any of the additional insureds by virtue of payment of any such liability covered by the insurance. In no way do the above minimum insurance requirements limit the liability assumed herein or elsewhere in this Agreement.

The City shall require all contractor and their subcontractors to carry insurance of the same kinds and coverages and minimum limits required herein, with the Indemnitees listed as additional insureds. In the event the City fails to obtain the proof of coverage certificates required herein and a claim is made or suffered, the City shall indemnify, defend and hold harmless the Indemnitees from any and all claims for which the required insurance would have provided coverage.

8. Grantor hereby warrants that it is the owner of the Property described above and that it has the right to grant City, its successors or assigns, permission to enter upon and use the Easement Area as provided in this Agreement.
9. This Agreement is the result of negotiations between the Parties hereto. This Agreement is intended by the Parties as a final expression of their understanding with respect to the matters herein, and is a complete and exclusive statement of the terms and conditions thereof.

10. This Agreement shall not be changed, modified, or amended except upon the written consent of the Parties hereto.
11. This Agreement supersedes any and all other prior agreements or understandings, oral or written, in connection therewith.
12. Grantor, its assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the Parties thereto shall be jointly and severally liable thereunder in accordance with Civil Code Section 1468.
13. City shall pay to Grantor the total sum of **Forty-Four Thousand Nine Hundred Sixty Dollars and Forty Cents (\$44,960.40)**, (the "Rental Price"), for the right to enter upon and use Grantor's land in accordance with the terms hereof. Grantor hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than for payment of the Rental Price, it being understood that the Rental Price constitutes complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever, whether known or unknown as of the date of this Agreement, relating to or in connection with the Temporary Construction Easement or any other rights granted under this Agreement. Payment shall be made upon the close of Escrow.

***[SIGNATURE PAGE FOLLOWS]***



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

**GRANTEE:**

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

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

**GRANTOR:**

Granite Construction Company, a California Corporation

By:   
Chris Miller, Executive Vice President

**ATTEST:**

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

**APPROVED AS TO FORM:**

WOODRUFF, SPRADLIN & SMART

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

**Exhibit List**

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

ACKNOWLEDGEMENT

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

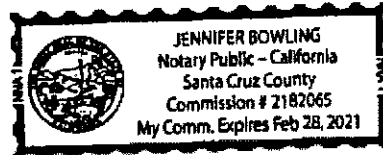
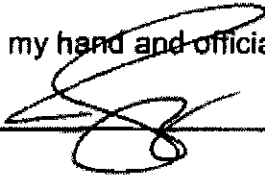
STATE OF CALIFORNIA )  
 )  
COUNTY OF Santa Cruz )

On April 17, 2017, before me, Jennifer Bowling, Notary Public, Chris Miller personally appeared Chris Miller, 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: 2/28/2021  
*notarial seal*

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-100-001

THOSE PORTIONS OF THE SOUTHWEST QUARTER AND THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE INTERSECTION OF THE CENTER LINE OF SOUTHERN PACIFIC RAILROAD WITH THE CENTER LINE OF INDIAN CANYON DRIVE (FORMERLY INDIAN AVENUE) AS SHOWN ON RECORD OF SURVEY FILED IN BOOK 18 OF RECORDS OF SURVEY AT PAGE 2 ON AUGUST 20, 1951; THENCE ALONG SAID CENTER LINE OF INDIAN CANYON DRIVE SOUTH 00°19'08" WEST 128.31 FEET TO AN ANGLE POINT IN THE SOUTHERLY LINE OF AN OVERHEAD CROSSING EASEMENT IN FAVOR OF THE COUNTY OF RIVERSIDE RECORDED OCTOBER 22, 1952 IN BOOK 1409, AT PAGES 566 AND 575 OF OFFICIAL RECORDS; THENCE ALONG SAID SOUTHERLY LINE SOUTH 50°53'07" EAST 96.23 FEET; THENCE ALONG THE SOUTHWESTERLY LINE OF A STRIP OF LAND 200 FEET WIDE, GRANTED TO THE SOUTHERN PACIFIC RAILROAD COMPANY, BY ACT OF CONGRESS, APPROVED ON JULY 27, 1866 AND APPROVED ON MARCH 3, 1871 AND AS SET FORTH IN THE PATENT FROM THE UNITED STATES OF AMERICA TO THE SOUTHERN PACIFIC RAILROAD COMPANY RECORDED JULY 31, 1905 IN BOOK 3, PAGE 228 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; SOUTH 50°53'07" EAST 44.91 FEET TO THE **TRUE POINT OF BEGINNING**;

1. THENCE LEAVING SAID SOUTHWESTERLY LINE SOUTH 0°19'08" WEST 286.20 FEET;
2. THENCE SOUTH 3°26'21" WEST 416.60 FEET;
3. THENCE SOUTH 75°14'39" EAST 13.84 FEET;
4. THENCE SOUTH 0°19'08" WEST 97.66 FEET;
5. THENCE SOUTH 72°10'42" WEST 12.34 FEET;
6. THENCE SOUTH 33°16'19" WEST 18.52 FEET;
7. THENCE SOUTH 5°17'23" WEST 33.26 FEET;
8. THENCE NORTH 89°40'52" WEST 1.05 FEET TO A LINE PARALLEL WITH AND DISTANT 75.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY LINE OF SAID SECTION 23, SAID WESTERLY LINE ALSO BEING THE CENTER LINE OF SAID INDIAN CANYON DRIVE;
9. THENCE ALONG SAID PARALLEL LINE SOUTH 00°19'08" WEST 915.00 FEET;
10. THENCE LEAVING SAID PARALLEL LINE SOUTH 89°40'50" EAST 14.17 FEET;
11. THENCE NORTH 0°19'08" EAST 260.33 FEET;
12. THENCE NORTH 1°21'35" EAST 329.72 FEET;
13. THENCE NORTH 89°40'50" WEST 5.16 FEET;
14. THENCE NORTH 0°19'08" EAST 372.66 FEET;
15. THENCE SOUTH 89°40'50" EAST 37.46 FEET;
16. THENCE NORTH 80°38'03" EAST 33.04 FEET;
17. THENCE NORTH 68°44'51" EAST 34.25 FEET;
18. THENCE NORTH 61°00'48" EAST 36.52 FEET;
19. THENCE NORTH 54°35'44" EAST 77.74 FEET;
20. THENCE SOUTH 77°55'41" EAST 29.15 FEET;
21. THENCE SOUTH 0°00'00" WEST 83.29 FEET;

EXHIBIT "A"  
TEMPORARY CONSTRUCTION EASEMENT  
APN 669-100-001

22. THENCE SOUTH 89°40'50" EAST 50.00 FEET;
23. THENCE NORTH 0°00'00" EAST 96.02 FEET;
24. THENCE NORTH 44°56'24" EAST 20.78 FEET;
25. THENCE SOUTH 89°40'50" EAST 62.78 FEET;
26. THENCE NORTH 0°19'10" EAST 50.00 FEET;
27. THENCE NORTH 86°53'26" WEST 102.72 FEET;
28. THENCE NORTH 89°40'50" WEST 88.80 FEET;
29. THENCE SOUTH 70°38'30" WEST 35.64 FEET;
30. THENCE SOUTH 66°58'13" WEST 90.83 FEET;
31. THENCE NORTH 89°40'50" WEST 31.75 FEET;
32. THENCE NORTH 3°26'21" EAST 412.15 FEET;
33. THENCE NORTH 0°19'08" EAST 274.55 FEET TO THE SOUTHWESTERLY LINE OF SAID 200-FOOT WIDE STRIP OF LAND;
34. THENCE ALONG SAID SOUTHWESTERLY LINE NORTH 50°53'07" WEST 19.25 FEET TO THE TRUE POINT OF BEGINNING.

AREA = 59,947 SQUARE FEET, MORE OR LESS

SEE EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THE BEARINGS AND DISTANCES USED IN THE ABOVE DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 6. MULTIPLY DISTANCES SHOWN BY 1.00002570 TO OBTAIN GROUND DISTANCES.

SIGNATURE Michael A. Havener 12-18-2015  
MICHAEL A. HAVENER DATE  
PLS 7354



# EXHIBIT "B"

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

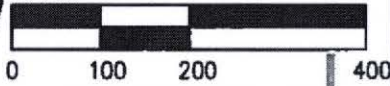
SW 1/4 OF  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

SEC. 22  
T. 3 S., R. 4 E.

**APN 669-100-001 NON-PLOTTABLE EASEMENTS**

A PUBLIC UTILITY EASEMENT IN FAVOR OF  
PACIFIC TELEPHONE AND TELEGRAPH CO. REC.  
1/23/1912 IN BK. 344, PG. 227 OF DEEDS.

A PERMANENT TELECOMMUNICATIONS  
EASEMENT IN FAVOR OF VARIOUS REC.  
8/29/2013 AS DOC. NO. 2013-0423943 O.R.  
VARIOUS PRIVATE EASEMENTS REC. 7/26/2013  
AS DOC. NO. 2013-0360350 O.R.



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

**LEGEND**

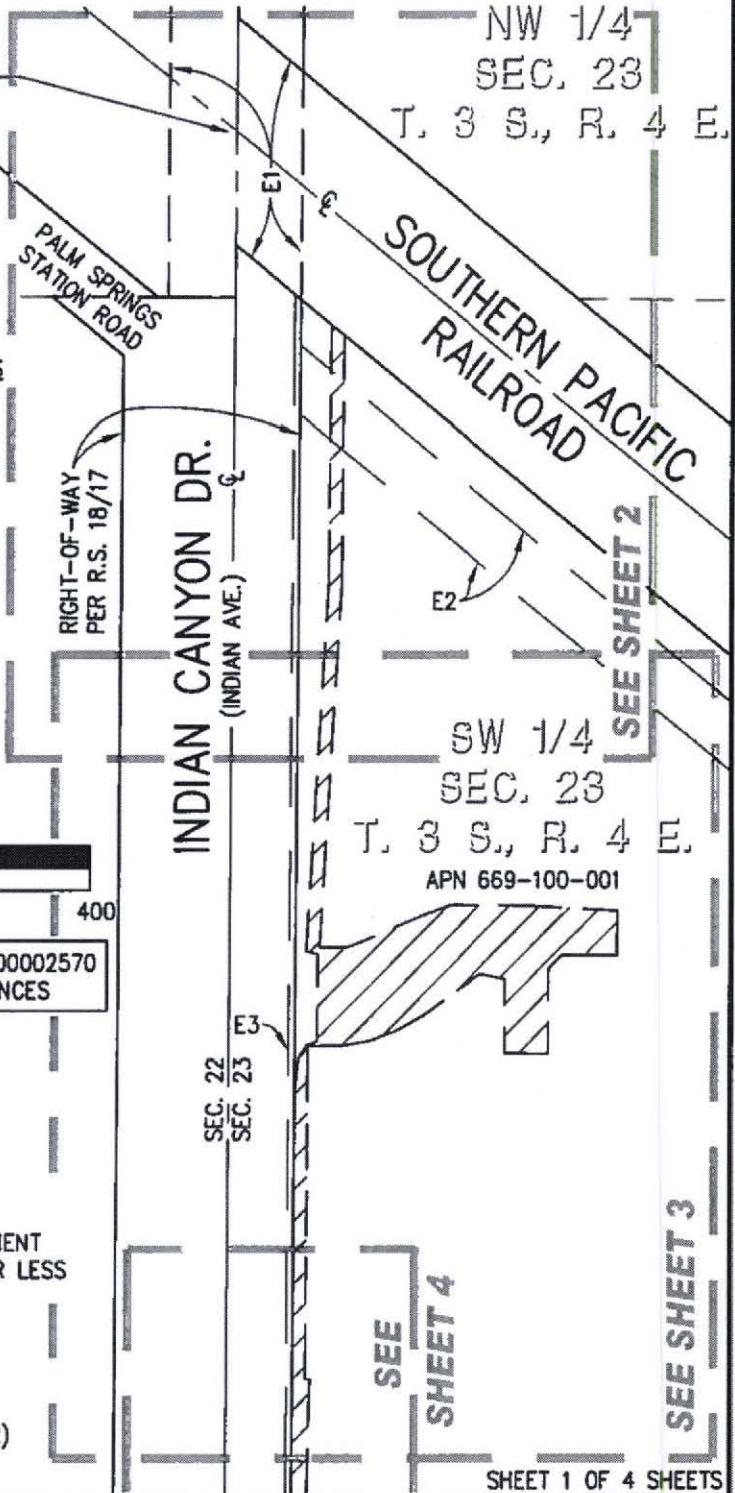


TEMPORARY CONSTRUCTION EASEMENT  
AREA = 59,947 SQ. FT., MORE OR LESS

P.O.C. POINT OF COMMENCEMENT

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

E# PLOTTED EASEMENT (SEE SHEET 2)



SHEET 1 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 200'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

# PLOTTED EASEMENTS

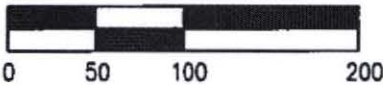
- E1 OVERHEAD CROSSING EASEMENT IN FAVOR OF THE COUNTY OF RIVERSIDE REC. 10/22/1952 IN BK. 1409, PG. 566 O.R. AND BK. 1409, PG. 575 O.R.
- E2 UTILITY EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON REC. 04/05/2006 AS DOC. NO. 2006-0244157 O.R.
- E3 POLE LINE EASEMENT IN FAVOR OF CALIFORNIA ELECTRIC POWER CO. REC. 11/16/1948 IN BK. 1027, PG. 213 O.R. NO WIDTH GIVEN.
- E4 UTILITY EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON REC. 12/23/2014 IN DOC. NO. 2014-0489319 O.R.

P.O.C.  
INT. OF THE CENTER LINE OF  
INDIAN CANYON DR. (INDIAN AVE.)  
AND SOUTHERN PACIFIC RAILROAD  
AS SHOWN ON ROS 18/2

SW 1/4 OF  
NW 1/4  
SEC. 23  
T. 3 S., R. 4 E.

SOUTHERN PACIFIC  
RAILROAD

SEC. 22  
T. 3 S., R. 4 E.

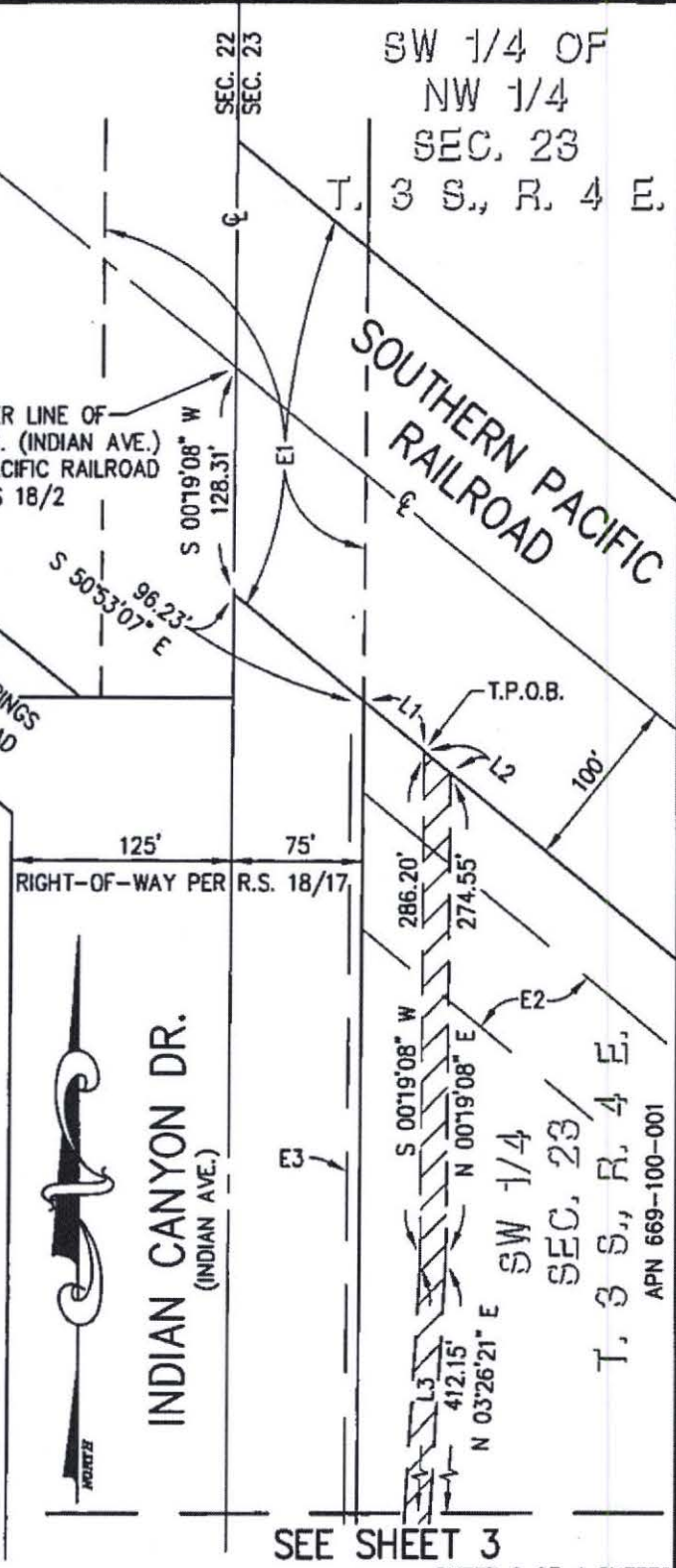


MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 50°53'07" W	44.91'
L2	N 50°53'07" W	19.25'
L3	S 03°26'21" W	416.60'

## LEGEND

- TEMPORARY CONSTRUCTION EASEMENT AREA = 59,947 SQ. FT., MORE OR LESS
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- E# PLOTTED EASEMENT (SEE ABOVE)



SEE SHEET 3  
SHEET 2 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

SEC. 22 T. 3 S., R. 4 E.

SEE SHEET 2

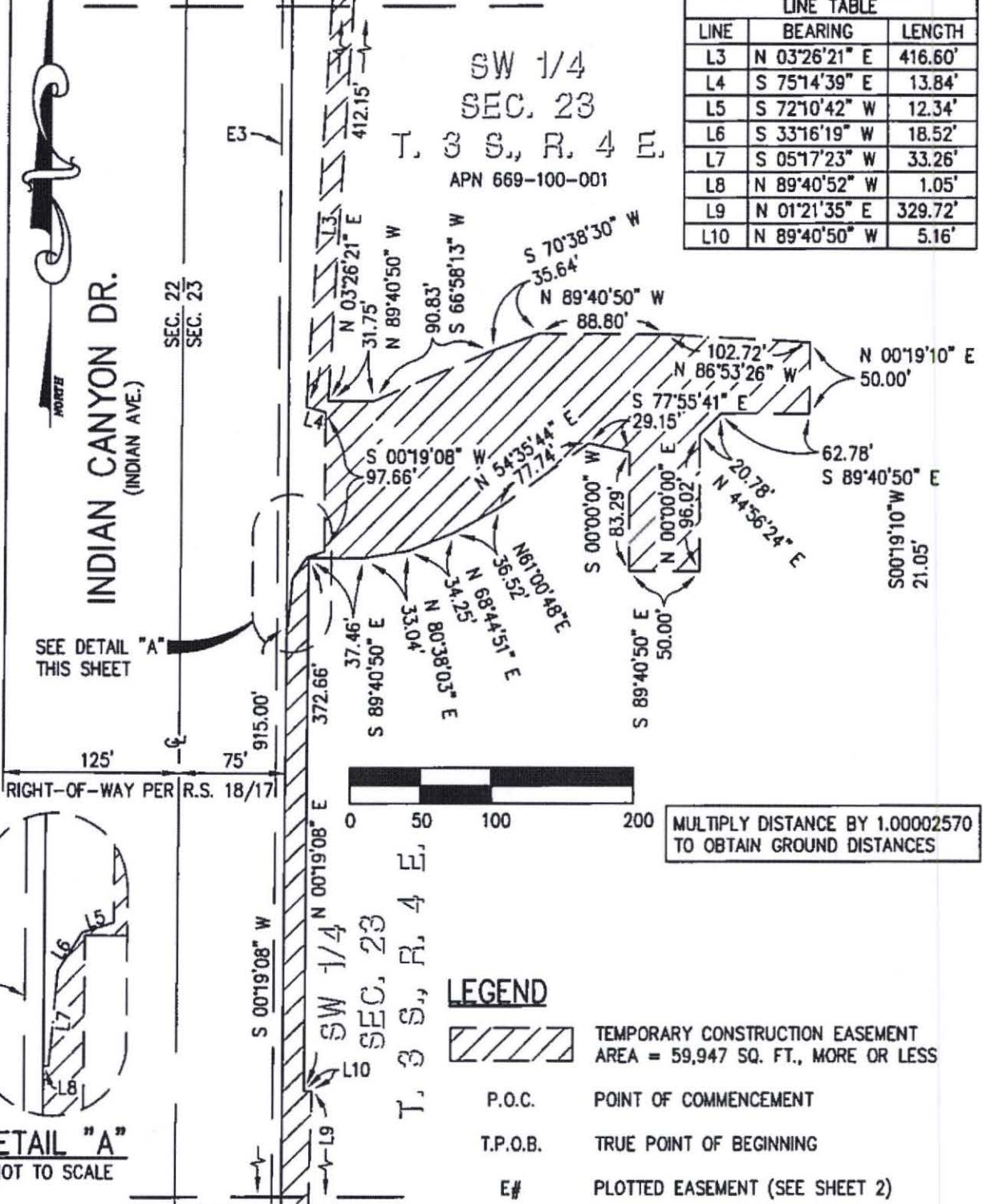


INDIAN CANYON DR.  
(INDIAN AVE.)

SEC. 22  
SEC. 23

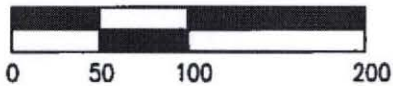
SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.  
APN 669-100-001

LINE TABLE		
LINE	BEARING	LENGTH
L3	N 03°26'21" E	416.60'
L4	S 75°14'39" E	13.84'
L5	S 72°10'42" W	12.34'
L6	S 33°16'19" W	18.52'
L7	S 05°17'23" W	33.26'
L8	N 89°40'52" W	1.05'
L9	N 01°21'35" E	329.72'
L10	N 89°40'50" W	5.16'

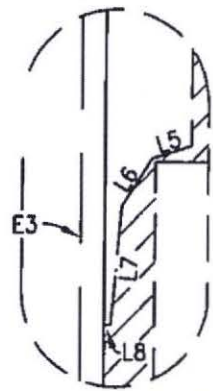


SEE DETAIL "A"  
THIS SHEET

RIGHT-OF-WAY PER R.S. 18/171



MULTIPLY DISTANCE BY 1.0002570  
TO OBTAIN GROUND DISTANCES



DETAIL "A"  
NOT TO SCALE

**LEGEND**

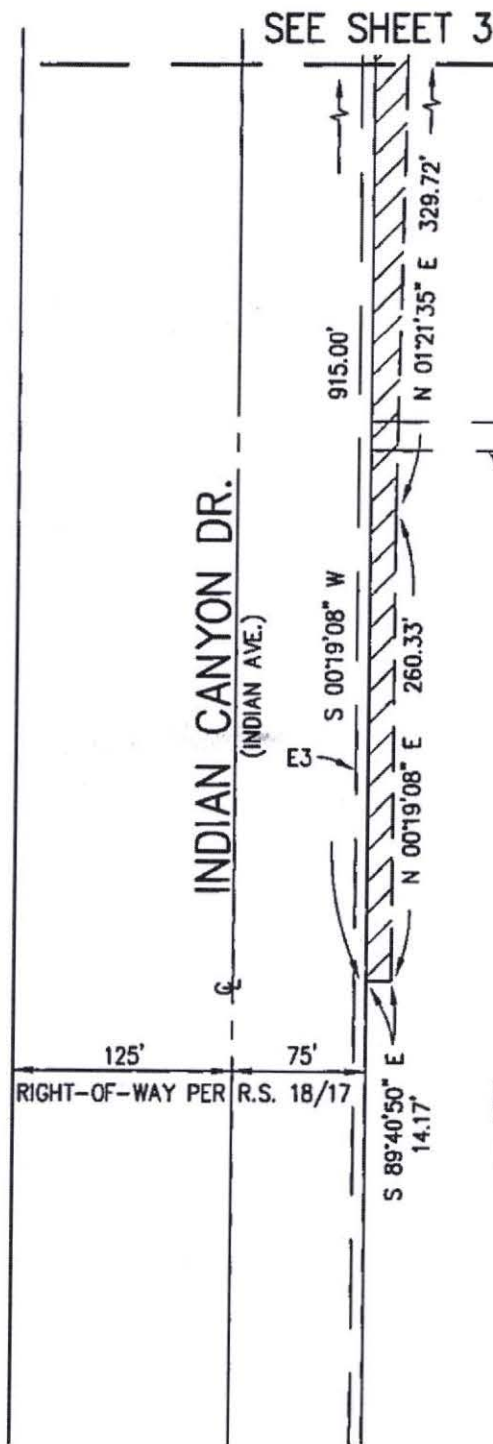
- TEMPORARY CONSTRUCTION EASEMENT  
AREA = 59,947 SQ. FT., MORE OR LESS
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- E# PLOTTED EASEMENT (SEE SHEET 2)

SEE SHEET 4

SHEET 3 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-29-15		DOC. NO.
CHECKED BY: MH	DATE: 12-18-15	INDIAN CANYON DRIVE WIDENING APN 669-100-001 GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		

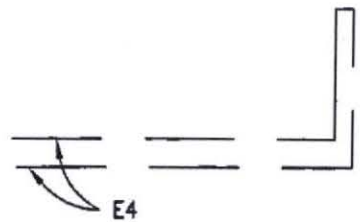
SEC. 22  
T. 3 S., R. 4 E.



SEE SHEET 3



MULTIPLY DISTANCE BY 1.00002570  
TO OBTAIN GROUND DISTANCES



SW 1/4  
SEC. 23  
T. 3 S., R. 4 E.  
APN 669-100-001

**LEGEND**

- TEMPORARY CONSTRUCTION EASEMENT  
AREA = 59,947 SQ. FT., MORE OR LESS
- P.O.C. POINT OF COMMENCEMENT
- T.P.O.B. TRUE POINT OF BEGINNING
- E# PLOTTED EASEMENT (SEE SHEET 2)

SHEET 4 OF 4 SHEETS

REVISED BY:	DATE:	<b>CITY OF PALM SPRINGS</b>	SCALE 1" = 100'
DRAWN BY: KA	DATE: 5-29-15		INDIAN CANYON DRIVE WIDENING APN 669-100-001
CHECKED BY: MH	DATE: 12-18-15	GRANITE CONSTRUCTION CO., A CALIFORNIA CORPORATION	DWG. NO.
APPROVED BY:	DATE:		



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

Receipt #: 200900795

State Clearinghouse # (if applicable): 2009071044

Lead Agency: CITY OF PALM SPRINGS

Date: 11/05/2009

County Agency of Filing: Riverside

Document No: 200900795

Project Title: INDIAN CANYON DRIVE & BRIDGE WIDENING

Project Applicant Name: DOKKEN ENGINEERING

Phone Number:

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

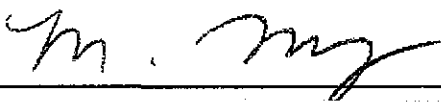
Project Applicant: Private Entity

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)

	1993.00
	\$64.00
<b>Total Received</b>	<b>2057.00</b>

Signature and title of person receiving payment:



FROM : F&G 2009 00795  
 BY : HANEYER

FISH FISH & GAME 2057.00

TOTAL FEE -----> 2057.00  
 AMOUNT (Check) RECEIVED -----> ( 2057.00)

CHANGE -----> 0.00

1 Check Received  
 Check #625723  
 \*\*\* RECEIPT \*\*\*

Larry M. Ward  
 Riverside County  
 Clerk and Recorder  
 2724 Gateway Drive  
 Riverside, CA 92507  
 (951) 486-7008  
 www.RiversideCR.com

11/05/2009 \*\* REPRINT \*\* 12:22PM  
 RECEIPT # 2734467

Notice of Determination

Appendix D

To:
[ ] Office of Planning and Research
For U.S. Mail: Street Address:
P.O. Box 3044 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

Lead Agency (if different from above):
Address:
Contact:
Phone:
FILED RIVERSIDE COUNTY
NOV 05 2009
LARRY W. WARD, CLERK
By M. Meyer Deputy

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): 2009071044

Project Title: Indian Canyon Drive and Bridge Widening

Project Location (include county): Indian Canyon Drive over UPRR, just south of Interstate 10, Riverside County.

Project Description:

The City of Palm Springs proposes to widen Indian Canyon Drive for a distance of approximately 4,000 feet south of its intersection with Garnet Avenue (south of Interstate 10). The Indian Canyon Drive Bridge, which crosses over the Union Pacific Railroad Tracks, would also be widened. The existing 2 lane road and bridge would be widened to a 6 lane facility.

This is to advise that the City of Palm Springs has approved the above described project on November 4, 2009 and has made the following determinations regarding the above described project.
[ ] Lead Agency or [ ] Responsible Agency
COUNTY CLERK
Neg Declaration/Ntc Determination
Filed per P.R.C. 21152
POSTED
NOV 05 2009

- 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: 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262

Signature (Public Agency) Marcus Fuller Title Assistant Director of Public Works, Ass. City Engineer

Date Nov. 5, 2009 Date Received for filing at OPR

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

# **ATTACHMENT 3**

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 8

ENVIRONMENTAL LOCAL ASSISTANCE (MS 1162)

464 WEST 4<sup>TH</sup> STREET, 6<sup>TH</sup> FLOOR

SAN BERNARDINO, CA 92401

PHONE (909) 388-1804

FAX (909) 383-6494

TTY (909) 383-6300



*Flex your power!  
Be energy efficient!*

September 24, 2009

Mr. Marcus Fuller  
3200 East Tahquitz Canyon Way  
Palm Springs, CA. 92201

File: 08-Riv-Local Assistance

FPN: BRLO 5282 (017)  
STPLN 5282 (016)

Dear Mr. Fuller:

The California Department of Transportation (Caltrans) has prepared the NEPA environmental determination (Categorical Exclusion) for the proposed project in the City of Palm Springs in the County of Riverside consisting of widening the existing Indian Canyon Bridge from 2 to 6 lanes (86' - ultimate width) from UPRR overcrossing (bridge 56C0025) to Garnet Ave. The project will accommodate horizontal and vertical clearance requirements as dictated by CPUC and UPRR during final design.

Caltrans would also like to reiterate the requirements of the NEPA Pilot Program MOU that became effective July 1, 2007. Pursuant to the MOU and Section 6005 of SAFETEA-LU codified at 23 U.S.C. 327(a)(2)(A), effective July 1, 2007 FHWA has assigned, and Caltrans has assumed, all the United States Department of Transportation (USDOT) Secretary's responsibilities under NEPA. The assignment applies to all projects on the State Highway System (SHS) and all Local Assistance Projects off the SHS within the State of California.

- Local Agency or its consultant *must do* formal QC of environmental documents and technical reports paralleling Caltrans standards, to be confirmed by use of "External QC Form" provided to Caltrans. <http://www.dot.ca.gov/scr/forms.htm>
- Local Assistance documents *must use* Annotated Outlines for EAs and EISs
  - Annotated Outlines are effective and efficient tools to ensure all requirements are met and to ensure consistency of terminology and treatment of issues. Agencies may use either the combined CEQA/NEPA outlines, or the NEPA-only outline. <http://www.dot.ca.gov/scr/forms.htm>
  - One Caltrans standard for federal environmental documents is required.
  - If challenged, Caltrans must defend Local Agency documents in federal court; documents that follow standardized formats and procedures are more defensible
- Local Agencies *must send* copies of:
  - 1) Environmental documents, 2) technical reports, 3) summary lists of environmental commitments to be incorporated into PS&E, and 4) permits to Caltrans' DLAE for files to facilitate audits and process reviews. The requirement to have environmental commitments and permits is not new (Local Assistance Procedures Manual Chapters 6, 12, 15, 17), but providing copy to DLAE is now mandated because of the need to provide rapid response to FHWA in process reviews and audits and because FHWA nationally is placing new emphasis on ensuring these commitments are carried out.

If you have any questions regarding the CE, please call Julie Lugaro at (909) 383-1570.

Sincerely,

Aaron Burton  
Senior Environmental Planner  
Environmental Local Assistance

**CATEGORICAL EXEMPTION/ CATEGORICAL EXCLUSION DETERMINATION FORM**

08-RIV-Palm Springs

0-Riv

BRLO 5282 (017) and STPLN 5282 (016)

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 proposed project in the City of Palm Springs in the County of Riverside consists of widening the existing Indian Canyon Bridge from 2 to 6 lanes (86' - ultimate width) from UPRR overcrossing (bridge 56C0025) to Garnet Ave, also construct north and south bridge approaches to improve traffic circulation and safety. The project will accommodate horizontal and vertical clearance requirements as dictated by CPUC and UPRR during final design.

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

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

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

**CALTRANS CEQA DETERMINATION** (Check one)

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

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

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

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

N/A

N/A

Print Name: Environmental Branch Chief

Print Name: Project Manager/DLA Engineer

N/A

N/A

Signature

Date

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, 2007, 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)
- 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 P. BURTON  
Print Name: Environmental Branch Chief

JOAN PAGANO  
Print Name: Project Manager/DLA Engineer

*[Signature]* 7/27/2009  
Signature Date

*[Signature]* 9/24/09  
Signature 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 September 15, 2008

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

08-RIV-Palm Springs

0-Riv

BRLO 5282 (017) and STPLN 5282 (016)

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:

**Project Components**

- Widen Indian Canyon Drive from 2 lanes to 6 lanes from UPRR overcrossing (bridge 56C0025) to Gamet Ave
- Construct north and south bridge approaches to improve traffic circulation and safety.
- The project will accommodate horizontal and vertical clearance requirements as dictated by CPUC and UPRR during final design.
- PES form signed July 9, 2002

**Technical Study Results**

**Noise**

- Noise Analysis was approved on February 24, 2003

**Water Quality**

- For project areas exceeding 0.4 hectare (1 acre), NPDES guidelines necessitate the development of a SWPPP by the contractor prior to construction to establish project-specific permanent and temporary BMPs. During the design phase, a Water Pollution Control Plan would be prepared to determine the minimum control requirements to be included in the SWPPP.
- BMPs include any facilities and methods used to remove, reduce, or prevent storm water runoff pollutants from entering receiving waters. Implementation of BMP goals may involve providing bioswales to reduce downstream pollutant concentrations, informing the public about runoff concerns to lessen impacts on receiving waters, and minimizing cuts and fills to curtail erosion.
- Erosion control methods, temporary and permanent BMPs, and improvement of drainage facilities along the roadway would minimize impacts from storm water runoff. The SWPPP and NPDES-compliant measures would ensure no adverse impacts would occur to water quality associated with the Build Alternative (Locally Preferred).

**Floodplain**

- The Location Hydraulic Study and the Summary Floodplain Encroachment Report found that the project was assessed as a low level of risk to the floodplain and Caltrans approved of the study August 20, 2009.

**Natural Environment Study**

- Appended Biological Opinion was signed on October 11, 2007
- Biological Assessment dated August 2006
- Avoidance, Minimization, and/or Mitigation Measures:
- The Programmatic Biological Opinion (USFWS 2005) and appended PBO with conservation measures (October 11, 2007) shall be followed.

**Invasive Species**

- Minimization measures for effects on invasive species would be implemented to comply with regulations under the California Department of Fish and Game.
- All construction equipment should be cleaned prior to movement to the construction site.
- Only weed-free mulches and erosion control mixes should be included in specification.
- Only appropriate native plants should be included in project landscaping.
- No topsoil should be imported.
- A weed eradication program should be implemented over the first year after construction.

**Conservation Measures (Appended PBO, October 11, 2007)**

Caltrans and the City proposed the following measures as part of the proposed action to avoid and minimize adverse effects for listed species:

1. Conservation measures 1 through 20 of the PBO shall be implemented by the Caltrans/City for the appended Project with the possible exception of PBO #4. If loose sand is to be removed from the

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

Project site and deposited on the Preserve in accordance with the existing agreement between CVWD and the City, then PBO conservation measure #14 would be null.

2. Approximately 14.2 acres (7.1 acres at a 2:1 ratio or 14.2 acres) of suitable habitats for the Coachella Valley milk-vetch and Coachella Valley fringe-toed lizards shall be preserved in an established conservation area near the action area as agreed to on Page 5 of the Appended BO for the Tiered Date Palm Drive Interchange Project (1-6-05-P-3282, EA 455900). Prior to construction, the Coachella Valley Association of Governments (CVAG), acting on behalf of Caltrans, has committed to the purchase and establishment of a conservation area, the finalization of a conservation agreement, and the establishment of an endowment fund for the management of the conservation area in perpetuity. The 26.34 acres (Table 1) of conservation habitat, required to offset the indirect impacts for this proposed Project, was previously purchased and accounted for as identified in the Appended BO for the Tiered Indian Avenue Interchange Project (1-6-05-P-3282).
3. The 14.2 acres (Table 1) of sandy habitat suitable for the fringe-toed lizard and milkvetch shall be purchased prior to the commencement of construction activities (including brush clearing and grading) associated with the Project.
4. Sand removed from the project footprint shall be deposited in accordance with an agreement between the City and CVWD. The Service shall approve the removal of sand and the deposition area prior to pickup, transportation and deposition of sand. If the quality of loose sand to be removed from the Project site and deposited on the Preserve is not suitable (consisting of rocks, fine sediment, and gravel), then conservation measure #4 would be null and the sand would not be removed to the Preserve.
5. During construction, soils to be impacted shall be watered down to prevent fugitive dust from drifting into adjacent habitat.
6. All construction equipment shall be cleaned prior to initial movement to the construction site.
7. Caltrans/City shall ensure that the Contractor avoids entering or damaging habitat located outside of the project footprint. The Contractor's operations shall be limited to the immediate project footprint and other designated work areas shown on the plans, except as authorized in writing by the authorized biologist. The Contractor shall avoid killing or injuring any wildlife within the habitat and shall avoid killing or injuring any wildlife that crosses into the work area, except as required for the immediate safety of project personnel. The Contractor shall notify the authorized biologist of any wildlife killed or injured by construction activities or the contractor's employees in the course of work.  
  
Native plants located inside the habitat, that are not shown on the plans to be removed, and that are injured or damaged by reason of the Contractor's operations, shall be replaced by the Contractor in accordance with Section 7 1.11 "Preservation of Property" of the Standard Specifications.
8. The Contractor shall retain, and have available, the services of an authorized biologist who will perform the duties of the biological monitor. The monitor is required to provide a pre-construction survey of the project site and any associated staging areas, provide employee training, monitor the temporary silt/wildlife fence installation, perform construction monitoring, and conduct endangered species relocation.

USFWS Conservation Measures (PBO September 23, 2004)

9. All areas outside of the project footprint will be delineated as Environmentally Sensitive Areas (ESAs). All parties in conjunction with this operation will strictly avoid these areas. No construction activities, materials, or equipment will be permitted in the ESAs. These areas must be placed on the design plans and included in the construction contract.

ESAs will be designated by erecting protective fencing delineating the project impact boundary and sensitive habitats. This barrier fencing will be constructed in such a way as to restrict the movement of reptiles into impacted areas. Fencing material can vary; however, it should consist of a cloth-like material that can withstand high winds, sun and heat. This fence should be buried 24-inches below the surface, to prevent terrestrial species from burrowing underneath, and extend above ground at least 24-inches.

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

10. An employee education program will be developed. Each employee (including temporary, contractors, and subcontractors) will receive a training/awareness program within two weeks of working on the proposed project. They will be advised of the potential impact to the listed species and the potential penalties for taking such species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and project features designed to reduce the impacts to these species and promote continued successful occupation of the project area environs. Included in this program will be color photos of the listed species, which will be shown to the employees. Following the education program, the photos will be posted in the contractor and resident engineer's office, where they will remain throughout the duration of the project. The contractor, Resident Engineer, and Service-approved biological monitor will be responsible for ensuring that employees are aware of the listed species.
11. The project proponent will designate a Service-approved qualified biologist who will be responsible for overseeing compliance with protective measures for the listed species. The biologist will have the authority to halt all associated project activities that may be in violation of this biological opinion. In such an event, the biologist will contact the Service within 24 hours.
12. Construction work areas will be delineated and marked clearly in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor will contact the Service to verify that the limits of construction have been properly staked and are readily identifiable.
13. A biologist will monitor construction to ensure that vegetation removal, Best Management Practices (BMPs), ESA fencing, and all avoidance and minimization measures are properly constructed and followed.
14. All equipment maintenance, staging, and dispensing of fuel, oil, or any other such activities, will occur in designated upland areas. The designated upland areas will be located in such a manner as to prevent any runoff from entering waters of the United States, including wetlands.
15. Typical erosion control measures, BMPs, in the vicinity of streams will be employed in accordance with the conditions in the 401 Water Quality Certification requirements of the Regional Water Quality Control Board.
16. Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities will be restricted. In compliance with Executive Order 13112, impacted areas will be revegetated with plant species native to desert habitat types and the Coachella Valley, and will avoid the use of species listed in Lists A & B of the California Exotic Pest Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999.
17. The seed of Coachella Valley milk-vetch will be collected off of plants from within the boundaries of permanent and temporary impacts from project construction. Seed collection will occur when the seed is past soft dough and prior to being naturally dispersed. The top four inches of soil surrounding the milk-vetch plants to be impacted will be collected and placed in plastic bags. This seed and soil will be distributed at an area consisting of aeolian habitat immediately following collection. The location where seed will be dispersed will be coordinated with the Service prior to collection.
18. All construction equipment will be inspected and cleaned prior to use in the proposed project footprint to minimize the importation of non-native plant material. All mulch, topsoil and seed mixes used during post construction landscaping activities and erosion control BMPs will be free of invasive plant species propagules. A weed abatement program will be implemented should invasive plant species colonize the area within the project footprint post-construction.
19. No off-road vehicle activity from construction personnel or other persons affiliated with the project will occur outside of the project footprint.
20. To reduce attraction of ravens and crows, which may eat fringe-toed lizards, all trash will be placed in raven-proof containers and promptly removed from the site.



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21. No pets or firearms will be permitted inside the project's construction boundaries or other associated work areas.
22. All sand removal and storage activities will be restricted to the project footprint. No maintenance activities will be authorized that extend beyond the boundaries of the project footprint.
23. To the extent possible, no sand removal activities will take place from 1 November – 30 March (to avoid winter dormancy periods for the lizards) or if ambient air temperature exceeds 102 degrees Fahrenheit (the temperature at which lizard activity tends to be reduced).
24. Vehicle speeds on unpaved access roads will be restricted to a maximum of 25 MPH.
25. All culverts, bridges, and associated water passage structures will be maintained such that water and sediment may pass between upstream and downstream locations and so as not to block the passage of wildlife.
26. Impacts resulting from this project will be offset by implementing the agreements established in the Conservation Bank Plan Addressing the Direct, Indirect, and Cumulative Effects of Interstate 10 Coachella Valley Interchange Projects (Plan). The Plan assesses potential effects and offsetting measures for the proposed projects. The Plan establishes mitigation ratios at 2:1 for direct impacts of the interchange and associated arterial improvements covered under this Opinion and 1:1 for indirect impacts. Required offsetting measures will be provided through the acquisition of land and the final conservation bank agreement. Caltrans and/or Coachella Valley Association of Governments (CVAG) will set up an endowment fund for the purpose of managing the proposed conservation bank in perpetuity.
27. Prior to beginning construction, CVAG, Caltrans, and FHWA will purchase and establish a conservation bank (Bank), as per the Plan; finalize a conservation bank agreement with the Service and CDFG, and set up the endowment fund for managing the property in perpetuity. Sufficient land will be purchased for the bank prior to start of construction for any given project. CVAG, Caltrans, and FHWA will coordinate with the Service and CDFG to locate and acquire Bank lands. All Bank lands will be approved by the Service and CDFG prior to purchase to ensure that these conservation lands benefit the fringed-toed lizard and milk-vetch. In addition, CVAG or its designee will be the manager of all Bank lands.
28. Geotechnical borings in areas with aeolian sand deposits will include the following measures:
  - a. No cross country-travel and geotechnical borings will take place from 1 November - 30 March (to avoid winter dormancy periods for the lizards) or if ambient air temperature exceeds 102 degrees Fahrenheit (the temperature at which lizard activity tends to be reduced).
  - b. When traveling cross-country, a route will be established and followed that avoids, to the maximum extent practicable, all sand hummocks and dunes.
  - c. The surface area will be returned to the pre-disturbance state. If sand dunes or hummocks were impacted, then the surface sand will be placed in a separate pile and replaced as a dune or hummock.
29. Archaeological surveys in areas with aeolian sand deposits will include the following measures:
  - a. The outer perimeter of all survey areas will be delineated and the area within this perimeter will be calculated and deducted from the Conservation Bank.
  - b. All work including staging, depositing excavated materials, storing equipment, etc, will be conducted within the perimeter of the survey area.

Air

- Air Quality Analysis was approved on January 16, 2003.
- On July 13, 2009, FHWA found that the Conformity Determination for the Indian Canyon Drive and Bridge Widening Project conforms to the State Implementation Plan (SIP) in accordance with 40 C.F.R. Part 93.
- Avoidance, Minimization, and/or Mitigation Measures:
  - Upon development of the project construction details and schedule, the City shall reestimate NOX emissions; and

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- If emissions are forecast to exceed the SCAQMD NOX threshold, the contractor shall use aqueous diesel fuel or one or more pieces of construction equipment with exhaust gas recirculation-type engines as necessary to reduce forecast emissions to less than the threshold limit.
- A Fugitive Dust (PM10) Mitigation Plan shall be prepared in compliance with Ordinance 1439 of the City of Palm Springs Municipal Code and shall be included as part of the construction contract specifications prior to the issuance of a grading permit. The Fugitive Dust Mitigation Plan shall specify steps that will be taken to comply with the City's Fugitive Dust and Erosion Control Ordinance, which restricts fugitive dust emissions. Measures outlined in the plan shall include but not be limited to daily watering of graded areas, washing of equipment tires before leaving the construction site, and use of SCAQMD-approved chemical stabilizers or soil binders.
- The proposed project shall incorporate into the project specifications the applicable provisions of the Final Coachella Valley PM10 SIP and SCAQMD Rule 403 and 403.1, as shown in the air quality technical report.
- The contractor shall discontinue construction activities during first- and second-stage smog alerts.
- When feasible, the contractor shall utilize existing power sources (i.e., temporary power poles) to minimize the use of diesel generators.
- The proposed project shall incorporate into the project specifications the applicable provisions of the Final Coachella Valley PM10 SIP and SCAQMD Rule 403 and 403.1, as shown in the air quality technical report.

**Hazardous Waste – ISA**

- ISA approved on February 24, 2003
- ISA re-approved September 2009
- ADL approved on February 24, 2003
- All hazardous waste testing should be done during WBS 165, prior to completion of PAED so that any special handling, treatment, or disposal provisions associated with hazardous wastes may be included in construction documents.

**Traffic**

- Traffic study was approved on June 5, 2007.
- Avoidance, Minimization, and/or Mitigation Measures:
  - Impacts to traffic flow as a result of construction activities could be reduced by developing and implementing a traffic management plan and a construction-phasing plan.

**Cultural Resources**

- State Historic Preservation Officer (SHPO) concurred with Caltrans' determination that there are no historic properties within the APE on June 11, 2004.

**Climate Change**

- Avoidance, Minimization, and/or Mitigation Measures:
  - The project would incorporate the use of energy efficient lighting, such as LED traffic signals. LED bulbs — or balls, in the stoplight vernacular — cost \$60 to \$70 apiece but last five to six years, compared to the one-year average lifespan of the incandescent bulbs previously used. The LED balls themselves consume 10 percent of the electricity of traditional lights, which will also help reduce the projects CO2 emissions.
  - Portland cement will be used where possible and if feasible, fly ash will be added to Portland cement mixes. The use of lighter color surfaces such as Portland cement helps to reduce the albedo effect and cool the surface. Adding fly ash reduces the GHG emissions associated with cement production and it also can make the pavement stronger.

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**Indian Canyon Drive Street and Bridge Widening  
Mitigation Monitoring Program Checklist**

Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
1	<p><b>AIR QUALITY</b></p> <p>The following measures would mitigate air quality-related impacts:</p> <p>Grading activities for the bridge construction and the road widening shall occur sequentially, not simultaneously.</p> <p>Minimize land disturbance during construction.</p> <p>Use watering trucks to minimize dust; watering should be sufficient to confine dust plumes to the project work areas.</p> <p>Suspend grading and earth moving when wind gusts exceed 25 miles per hour unless the soil is wet enough to prevent dust plumes.</p> <p>Cover trucks when hauling dirt.</p> <p>Stabilize the surface of dirt piles if not removed immediately.</p> <p>Limit vehicular paths on unpaved surfaces and stabilize any temporary roads.</p> <p>Minimize unnecessary vehicular and machinery activities.</p> <p>Sweep paved streets at least once per day where there is evidence of dirt that has been carried onto the roadway.</p> <p>Revegetate disturbed land, including vehicular paths created during construction, to avoid future off-road vehicular activities.</p> <p>Remove unused material.</p> <p>Discontinue construction activities during first- and second-stage smog alerts.</p> <p>Incorporate into the project specifications the applicable provisions of the Final Coachella Valley PM<sub>10</sub> SIP and South Coast Air Quality Management District Rule 403 and 403.1, as shown in the air quality technical report.</p> <p>A Fugitive Dust (PM<sub>10</sub>) Mitigation Plan shall be prepared in compliance with Ordinance 1439 of the City of Palm Springs Municipal Code and shall be included as part</p>	Place as notes on the project plans	X	X	X	City of Palms Springs, Construction Contractor		Develop air quality measures prior to construction and implement during construction. Monitor during construction.

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Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	of the construction contract specifications prior to the issuance of a grading permit.							
2	<p>The following measure would minimize exposure to diesel particulate emissions:</p> <p>When feasible, replace at least one piece of diesel-operated equipment with a gas-operated piece equipment.</p> <p>When feasible, utilize existing power sources (i.e., temporary power poles) to minimize the use of diesel generators.</p> <p>Locate construction equipment and truck staging and maintenance areas as far as feasible and nominally downwind of schools, active recreation areas, and other areas of high population density.</p>	Place as notes on the project plans	X	X	X	National City, Construction Contractor		Inform construction contractor prior to grading and monitor during construction.
<b>HYDROLOGY, WATER QUALITY, AND STORM WATER RUNOFF</b>								
3	<p>The following measures shall be implemented to minimize storm water and hydrology-related impacts:</p> <p>A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared to address erosion control and sedimentation issues related to the grading aspect of the project. The SWPPP shall specify and describe the implementation process of all best management practices that will address equipment operation and materials management, prevention of erosion, and prevention of sedimentation. The City Engineer of the City of Palms Springs shall ensure that the SWPPP is properly implemented.</p>	Completed plan	X	X		City Engineer, City of Palms Springs, Construction Contractor		Prepare plan prior to construction. Implement during construction.
<b>WILDLIFE</b>								
4	<p>The following measure shall be implemented to reduce wildlife impacts:</p> <p>Implementation of the required mitigation measures outlined in the <i>Conservation Plan Addressing the Direct, Indirect, and Cumulative Effects of Interstate 10 Coachella Valley Interchange Projects</i> (Caltrans 2003) regarding impacts to wildlife habitat. These measures include the purchase and conservation of comparable habitat in an established Conservation Bank under the auspices of the Draft Coachella Valley Multi-Species Habitat</p>	Approval by the resource agencies	X	X		City of Palms Springs, Construction Contractor		Prepare plan prior to construction. Implement during construction.

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Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	Conservation Plan (CVMSHCP).							
	<b>THREATENED AND ENDANGERED SPECIES</b>							
5	<p>The following measures shall be implemented to reduce threatened and endangered species impacts:</p> <p>Implementation of the required mitigation measures outlined in the Conservation Plan (Caltrans 2003) regarding threatened and endangered species. Required mitigation shall be met through the replacement of desert sand fields habitat, on a 2:1 basis in the case of direct impacts, and a 1:1 basis in the case of indirect impacts, in an established Conservation Bank under the auspices of the CVMSHCP.</p> <p>All areas outside of the project footprint will be delineated as Environmentally Sensitive Areas with protective fencing.</p> <p>An education program will be developed to advise construction staff of potential impacts to listed species.</p> <p>Biological monitoring will be provided to oversee compliance with protective measures for listed species.</p> <p>Seed of the Coachella Valley milk-vetch will be collected from plants that are within the Area of Effect prior to construction.</p> <p>All equipment will be inspected and cleaned prior to use in the project area to minimize exotic species introductions.</p> <p>To the extent feasible, no sand removal activities will take place from November 1 – March 30 to avoid winter dormancy periods for lizards or if ambient air temperatures exceed 102 degrees Fahrenheit (the temperature at which lizard activity tends to be reduced.</p>	Approval by the resource agencies	X	X		City of Palms Springs, Construction Contractor		Prepare plan prior to construction. Implement during construction.
	<b>CLIMATE CHANGE</b>							
6	To the extent that equipment and technology is available and cost effective, the applicant shall encourage contractors to use alternate fuels, catalyst and filtration technologies, and retrofit existing engines in construction equipment.	Place as notes on the project plans	X	X		City of Palms Springs, Construction Contractor		Before and during construction – Note shall be written on all construction documents for implementation during

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Mitigation Measure No.	Avoidance, Minimization, and/or Mitigation Measure	Method of Verification	Timing of Verification			Responsible Party Initials	Completed Date	Comments
			Pre-construction	During Construction	Post-construction			
	<p>Minimize idling time to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required.</p> <p>To the extent practicable, manage operation of heavy-duty equipment to reduce emissions such as maintain heavy-duty earthmoving, stationary and mobile equipment in optimum running conditions which can result in 5% fewer emissions. Properly maintain equipment according to manufacturers' specifications.</p> <p>Use electric equipment when feasible.</p> <p>The project would incorporate the use of energy efficient lighting, such as LED traffic signals. LED bulbs — or balls, in the stoplight vernacular — cost \$60 to \$70 apiece but last five to six years, compared to the one-year average lifespan of the incandescent bulbs previously used. The LED balls themselves consume 10 percent of the electricity of traditional lights, which will also help reduce the projects CO2 emissions.</p> <p>Portland cement will be used where possible and if feasible, fly ash will be added to Portland cement mixes. The use of lighter color surfaces such as Portland cement helps to reduce the albedo effect and cool the surface. Adding fly ash reduces the GHG emissions associated with cement production and it also can make the pavement stronger.</p>						construction.	