

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

638A



**FROM:** TLMA - Transportation Department

**SUBMITTAL DATE:**  
November 21, 2012

**SUBJECT:** Indian Avenue Roadway Improvements Between 20<sup>th</sup> Avenue and Dillon Road,  
Memorandum of Understanding (MOU).

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Endorse the Indian Avenue project improvements between 20<sup>th</sup> Avenue and Dillon Road;
2. Authorize the Director of Transportation and Land Management to approve an MOU between the County of Riverside, the City of Desert Hot Springs, and the City of Palm Desert that is in substantial conformance with the attached MOU, subject to review and approval as to form by County Counsel;

Juan C. Perez  
Director of Transportation and Land Management

JCP:gl

(Continued On Attached Page)

|                       |                               |              |                         |           |
|-----------------------|-------------------------------|--------------|-------------------------|-----------|
| <b>FINANCIAL DATA</b> | Current F.Y. Total Cost:      | \$ 1,025,743 | In Current Year Budget: | Yes       |
|                       | Current F.Y. Net County Cost: | \$ 0         | Budget Adjustment:      | No        |
|                       | Annual Net County Cost:       | \$ 0         | For Fiscal Year:        | 2012/2013 |

**SOURCE OF FUNDS:** Highway Gas Tax (24%), DIF Fund 30508 (76%)

Positions To Be Deleted Per A-30 ☐

There are no General Funds used in this project.

Requires 4/5 Vote ☐

**C.E.O. RECOMMENDATION:**

APPROVE

By

Tina Grande

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Benoit, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

**Ayes:** Buster, Tavaglione, Stone, Benoit and Ashley

**Nays:** None

**Absent:** None

**Date:** November 27, 2012

**xc:** Trasnp., E.O.

Kecia Harper-Ihem

Clerk of the Board

By:

Deputy

Prev. Agn. Ref. 1/30/07,3.30

District: 5/4

Agenda Number:

3.26

FORM APPROVED COUNTY COUNSEL  
BY:   
DATE: 11/20/12  
MARSHALL VICTOR  
Departmental Concurrence

☒ Policy  
☐ Consent  
 Dept't Recomm.:  
☐ Policy  
☐ Consent  
 Per Exec. Ofc.:

The Honorable Board of Supervisors

RE: Indian Avenue Roadway Improvements Between 20th Avenue and Dillon Road,  
Memorandum of Understanding (MOU).

November 21, 2012

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3. Reprogram the current commitment of \$306,499 of Development Impact Fee (DIF) Fund 30508 (Coachella Western Area Plan No. 2), Roads, Bridges, Major Improvements from the Ramon Road Widening/Reconstruction Project to the Indian Avenue Improvement Project between 20<sup>th</sup> Avenue and Dillon Road; and
4. Direct the Executive Office to reimburse up to \$306,499 based on project expenditures from DIF Fund 30508 Roads, Bridges, Major Improvements to the Transportation and Land Management Agency as needed, pursuant to the MOU.

#### **BACKGROUND:**

In July of 2011, the City of Desert Hot Springs met with the Department of Commerce Economic Development Administration (DOC-EDA) to discuss the potential for grant funding to attract economic investment in the City. The grant funding criteria included projects linked to energy generation and multi-jurisdictional projects. It was determined, following meetings with staff from the County of Riverside, City of Desert Hot Springs and City of Palm Springs that road improvements along Indian Canyon Drive between 20<sup>th</sup> Avenue and Dillon Road would be an ideal candidate for this grant funding program due to the need to improve this regional corridor to enhance capacity, improve road conditions and safety, and promote economic development.

The City of Desert Hot Springs has submitted a "pre-application" to DOC-EDA and has been requested to complete the application process by submittal of the multi-jurisdictional MOU.

The MOU defines the project and the roles and responsibilities of each party with respect to funding, design, and construction of the project. The total project is projected to cost \$14,397,149. The DOC-EDA grant is for \$3 million. The balance of \$11,397,149 will be funded by the Coachella Valley Association of Governments (CVAG) – 75%, and the local jurisdictions – 25% split between the City of Desert Hot Springs, the City of Palm Desert, and the County of Riverside based on the pro-rata share of land involved. The following is the pro-rata estimate:

City of Desert Hot Springs (36%): \$1,025,743  
City of Palm Springs (28%): \$797,800  
County of Riverside (36%): \$1,025,743

The funding contribution between the DOC-EDA grant and the CVAG funding allow the local jurisdictions leverage funds to build a \$14.4 million road improvement project with an overall 7% contribution from the County of Riverside.

The City of Desert Hot Springs has been designated as the lead agency for the project and has entered into an agreement with the CVAG for the 75% funding match.

The County's DIF contribution consists of reprogramming \$306,499 from the Ramon Road Widening/Reconstruction Project and \$472,916 from the Regional Transportation Match from Fund 30508 for a total of \$779,415.

**Tri-Party Memorandum of Understanding  
For  
Project to Improve Indian Avenue Between 20<sup>th</sup> Avenue and Dillon Road**

This Tri-Party Memorandum of Understanding ("MOU") is entered into as of \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the County of Riverside ("County"), a political subdivision of the State of California, the City of Desert Hot Springs ("Desert Hot Springs"), a California charter city, and the City of Palm Springs ("Palm Springs"), a California charter city. County, Desert Hot Springs and Palm Springs are each individually a "Party" and collectively, the "Parties."

**Recitals**

A. The Transportation Project Prioritization Study (the "Transportation Study"), a Coachella Valley-wide study regularly prepared and updated under auspices of the Coachella Valley Association of Governments ("CVAG"), a California joint powers agency, has identified various transportation and highway projects throughout the Coachella Valley as projects of regional importance.

B. In the Transportation Study, CVAG identified a project to design and construct improvements to Indian Avenue between 20<sup>th</sup> Avenue and Dillon Road, and improvements to the intersection of Indian Avenue and Dillon Road (the "Project"). The Project is of significant regional importance and is located within the jurisdictions of Desert Hot Springs, Palm Springs and the County. The Project consists of the improvement of 9,645 linear feet of roadway infrastructure as detailed on Exhibit A attached hereto and incorporated herein by this reference.

C. To fund the Project, Desert Hot Springs submitted a preliminary application for the United States Department of Commerce (the "DOC") Economic Development Administration Public Infrastructure Grant for \$3 million (the "Federal Grant"). Desert Hot Springs received a favorable reaction from the DOC, and the DOC requested that the Parties enter into a joint memorandum of understanding in support of Desert Hot Spring's application for the Federal Grant.

D. In addition to the Federal Grant, each Party desires to assist in the funding of the Project through individual financial contributions.

E. CVAG desires to help fund implementation of the Project as the Parties are member jurisdictions of CVAG, and the Project is of regional importance.

F. The Parties desire to enter into this MOU to establish the roles and responsibilities of each Party with respect to the design and construction of the Project.

NOW, THEREFORE, in consideration of the covenants of the Parties expressed in this MOU, the Parties agree as follows:

1. Purpose. The purpose of this MOU is to formalize the commitment among the Parties to work in a partnering process to coordinate the design, construction and funding of the Project, including the coordinated submission of a final application to the DOC for the Federal Grant, and to support the efficient and orderly implementation of the Project.

2. Project Development and Management.

a. Project Manager. Desert Hot Springs shall serve as the lead agency for the Project, and shall provide the project management and construction services for the design and implementation of the Project, including, but not limited to hiring design consultants, preparing engineering studies and drawings, right-of-way acquisition, preparing required documentation and reporting functions, finance administration, obtaining necessary permits and approvals, and managing the design, public bid, construction, invoicing, and grant and financial management processes (the "Project Manager Services"). However, the County retains the right to perform inspection work within its jurisdiction if elected.

b. Cooperative Effort. Desert Hot Springs shall provide the Project Manager Services in consultation with the County and Palm Springs. The Parties shall cooperate with each other to enable the performance of the Project Manager Services by Desert Hot Springs pursuant to this MOU. The Parties shall use their best efforts to be timely and responsive in accomplishing all work covered by this MOU. Each Party shall designate a point of contact, which person shall have the responsibility for ensuring requests are met in a timely manner and resolving disputes, should they arise.

c. Project Compliance. To advertise, award and administer a public works contract for the construction of the Project in accordance with the local Agency Public Contract Code, Federal Regulations, the California Labor Code, State and regulatory agency requirements and in accordance with an encroachment permit issued by the County .

d. County Liability. Neither the County nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Desert Hot Springs or Palm Springs under or in connection with any work, authority or jurisdiction delegated to Desert Hot Springs or Palm Springs under this Agreement. It is further agreed that pursuant to Government Code Section 895.4, Desert Hot Springs and/or Palm Springs shall fully indemnify and hold the County harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Desert Hot Springs or Palm Springs under or in connection with any work, authority or jurisdiction delegated to Desert Hot Springs or Palm Springs under this Agreement.

e. Desert Hot Springs Liability. Neither Desert Hot Springs nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by County or Palm Springs under or in connection with any work, authority or jurisdiction delegated to County or Palm Springs under this Agreement. It is further agreed that pursuant to Government Code Section 895.4, County and/or Palm Springs shall fully indemnify and hold Desert Hot Springs harmless from any liability imposed

for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by County or Palm Springs under or in connection with any work, authority or jurisdiction delegated to County or Palm Springs under this Agreement.

g. **Palm Springs Liability.** Neither Palm Springs nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by County or Desert Hot Springs under or in connection with any work, authority or jurisdiction delegated to County or Desert Hot Springs under this Agreement. It is further agreed that pursuant to Government Code Section 895.4, County and/or Desert Hot Springs shall fully indemnify and hold Palm Springs harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by County or Desert Hot Springs under or in connection with any work, authority or jurisdiction delegated to County or Desert Hot Springs under this Agreement.

f. **Insurance Requirement.** To cause the Desert Hot Springs's contractor to maintain in force, until completion and acceptance of the Project construction contract, a policy of Contractual Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, in the amount of \$2,000,000 minimum single limit coverage, and a policy of Automobile Liability Insurance in the amount of \$1,000,000 minimum. Endorsements to each policy shall be required which name the County, its officers, agents and employees as additionally insured. The Desert Hot Springs shall also require the contractor to maintain Worker's Compensation Insurance.

f. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affects the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of roads different from the standard of care imposed by law.

3. **Project Funding.** The Parties and CVAG shall fund the Project as specified in this MOU. The total cost of the Project is estimated to be \$14,397,149 (the "Total Project Cost") as provided in the Project budget attached hereto as Exhibit B and incorporated herein by this reference.

a. **General Structure of CVAG Funding Procedure.** Under CVAG's policy of funding eligible projects by member jurisdictions (the "CVAG Funding Procedure"), CVAG shall be responsible for seventy-five percent (75%) of the project costs (the "Regional Share Cost"), and the responsible member jurisdictions shall be responsible for twenty-five percent (25%) of the project costs (the "Local Share Cost") *plus* any ineligible project costs that are not permitted to be funded pursuant to the CVAG's rules and policies ("CVAG Ineligible Cost"). The CVAG Funding Procedure requires outside funding to be deducted from the total cost of a project prior to the calculation of the Regional Share Cost and the Local Share Cost.

b. **Project-Specific Funding Procedure.** In accordance with the CVAG Funding Procedure, the Parties agree that the Project is anticipated to be financed as follows:

i. The Federal Grant shall be deducted from the Total Project Cost prior to the determination of the Regional Share Costs and the Local Share Costs of the Project

(the "Net Project Cost"). The Net Project Cost is estimated to be \$11,397,149, which represents the difference between the Total Project Costs and the Federal Grant.

ii. The Net Project Cost shall be used to calculate the Regional Share Cost and the Local Share Cost. The Regional Share Cost is estimated to be \$8,547,862, which represents the Net Project Cost *multiplied by* the percentage share of the Regional Share Cost (i.e. 75%). The Local Share Cost is estimated to be \$2,849,287, which represents the sum of the Net Project Cost *multiplied by* the percentage share of the Local Share Cost (i.e. 25%) *plus any* CVAG Ineligible Costs. The sum of the Local Share Cost *plus* the CVAG Ineligible Costs is the "Total Local Jurisdiction Costs."

iii. Each Party is required to pay a portion of the Total Local Jurisdiction Costs in accordance with the percentage allocations specified in Exhibit C, attached hereto and incorporated herein by this reference. The Total Local Jurisdiction Costs percentages are based upon the total amount of improved linear feet of the Project within the jurisdiction of each Party.

c. Requirement to Secure Funding. The Parties shall ensure that sufficient funding is in place prior to the commencement of the Project. If the Federal Grant award is less than \$3 million, the Parties agree in good faith to meet and confer to consider amendment to this MOU to provide for further appropriate funding for the implementation of the Project.

d. Increases in Total Project Cost. The Total Project Cost is estimated based on the Project budget provided in Exhibit B. To the extent the Total Project Cost as provided therein increases above 10%, the Parties agree in good faith to meet and confer to consider amendment to this MOU to provide for further appropriate funding for the implementation of the Project. Increases in materials costs arising from various factors including, but not limited to, import tariff or duty, commodity and/or input shortages, or prevailing wage increases, shall be divided among the Parties pursuant to the Regional Share Costs and Local Share Costs formulas provided in this Section 3.

#### 4. Payment.

a. Timing of Funding; Escrow Account. The Parties agree to deposit fifty percent (50%) of its proportionate share of the Total Local Jurisdiction Costs into an escrow account established by Desert Hot Springs (the "Escrow Account") within ten (10) business days of receipt of the final commitment from the DOC for the Federal Grant. The Parties agree to deposit the remaining fifty percent (50%) of its proportionate share of the Total Jurisdiction Costs into the Escrow Account within ten (10) business days of the commencement of construction of the Project.

b. Costs Eligible for Reimbursement. The Project Manager Services costs eligible for advanced payment or reimbursement from the Escrow Account include, but are not limited to, the following items: (1) Desert Hot Springs and/or consultant costs associated with direct Project coordination and support; (2) funds expended in preparation of preliminary engineering studies and design drawings; (3) funds expended for preparation of environmental

review documentation that may be required; (4) all costs associated with right-of-way acquisition, including costs associated with engineering, appraisal, legal costs for condemnation proceedings; (5) costs reasonably incurred for any condemnation proceedings required; (6) Desert Hot Springs and/or consultant costs incurred for the preparation of plans, specifications and estimates; (7) Desert Hot Springs costs associated with the competitive bidding process; (8) construction costs, including change orders; (9) construction management and field inspection; and (10) Desert Hot Springs administrative costs to manage and administer completion of the Project by providing the Project Manager Services.

c. Invoices. At the end of each calendar quarter, Desert Hot Springs shall submit an invoice to the Parties documenting the expenditure of the Local Share Costs in the Escrow Account. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to Desert Hot Springs for the Project. Upon receipt of an invoice, the Parties may request additional documentation or explanation of the costs detailed on the invoice. In the event the Parties dispute amounts on the invoices, CVAG shall have the final authority to make a determination on the validity of the invoice pursuant to the procedure provided in that certain Agency Reimbursement Agreement by and between CVAG and Desert Hot Springs dated December 3, 2012.

5. Term and Termination.

a. Term. The effective date of this MOU is December 3, 2012. The initial term of this MOU shall be for seventy-two (72) months, unless terminated by the Parties as provided in this Section 5, or extended by mutual consent of the Parties as evidenced by an amendment to this MOU executed by the Parties.

b. Termination. The Parties may terminate this MOU by giving forty-five (45) days prior written notice to the other Parties. The Party delivering such notice to terminate shall meet and confer with the other Parties to within ten (10) business days of delivering such notice to discuss any outstanding work or payment issues. The Parties shall reimburse Desert Hot Springs for all Project Manager Services provided as of the effective date of the termination.

6. Event of Default. Any one of the following occurrences shall constitute an "Event of Default" under this MOU: (a) a Party shall fail to pay any payment when due in accordance with the terms hereof; (b) a Party becomes insolvent or bankrupt, commits any act of bankruptcy, generally fails to pay its debts as they become due, becomes the subject of any proceedings or action of any regulatory agency or any court relating to bankruptcy or insolvency, or makes an assignment for the benefit of its creditors, or enters into any agreement for the composition, extension, or readjustment of all or substantially all of his obligations; or (c) a Party fails to comply with any covenant contained in this MOU and does not cure such failure within fifteen (15) days after receiving written notice thereof. Upon the occurrence of any Event of Default hereunder, the non-defaulting parties shall have and may exercise any and all rights and remedies available to it at law or in equity.

7. Miscellaneous.

a. Entire Agreement. This MOU contains the entire agreement of the Parties related to the subject matter hereof and supersedes all prior written or oral agreements, understandings, representations or statements with respect thereto. This MOU may not be amended or modified except in a writing signed by the Parties.

b. Severability. If any one or more of the terms, provisions or conditions of this MOU is declared by a court of competent jurisdiction to be invalid, unenforceable, void or voidable for any reason, each and every remaining term, provision and condition shall not be affected and shall remain valid and enforceable to the maximum extent permitted by law.

c. No Partnership or Joint Venture. This MOU shall not be construed as creating a partnership or joint venture between the Parties.

d. Counterparts. This MOU may be executed in one or more counterparts, each of which will be deemed an original, and all of which, when taken together, will constitute one and the same instrument.

e. Choice of Law. This MOU, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this MOU shall be filed in the Superior Court of California, County of Riverside or in the United States District Court for the Central District of California.

f. No Assignment; No Third Party Beneficiaries. The rights granted hereby may not be transferred or assigned by operation of law or otherwise without the written consent of each Party. Nothing in this MOU is intended to or shall confer upon any persons other than the Parties any rights or remedies hereunder.

g. Waiver. A waiver by a Party of the performance of any covenant or condition herein shall not invalidate this MOU nor shall the delay or forbearance by the Parties in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right. No waiver of any breach of any covenant or provision herein shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless it complies with the provisions of Section 7.a.

h. Section Headings; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this MOU. The provisions of this MOU shall be construed as a whole according to their common meaning, and not strictly for or against any Party, in order to achieve the objectives and purposes of the Parties in executing this MOU.

[Remainder of the page intentionally blank.]

IN WITNESS WHEREOF, the Parties have executed this Tri-Party Memorandum of Understanding as of the date first written above.

**COUNTY OF RIVERSIDE, a political subdivision of the State of California**

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

FORM APPROVED COUNTY COUNSEL

BY: MS Victor 11/20/12  
MARSHA L. VICTOR DATE

**CITY OF DESERT HOT SPRINGS, a California charter city**

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

City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CITY OF PALM SPRINGS, a California charter city**

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

ATTEST:

\_\_\_\_\_

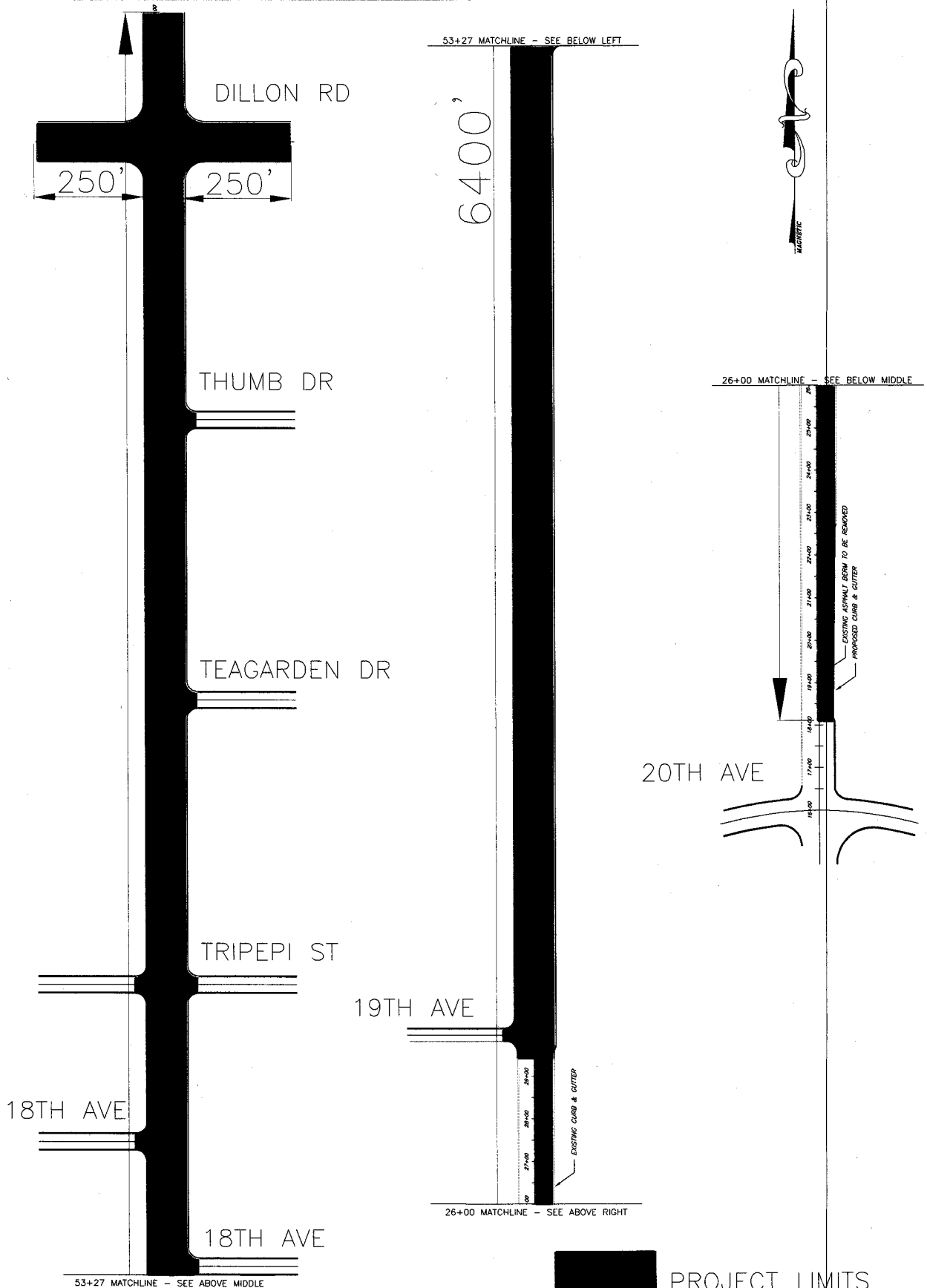
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**Exhibit A**

**Project Map**

EMA  
N. INDIAN CANYON DRIVE &  
DILLON ROAD PROJECT  
PHASE 1 & 2



**Exhibit B**

**Project Budget**

**Exhibit C**

**Local Share Allocation (i.e. 25% of the Net Project Cost)**

| <b>Local Jurisdiction</b> | <b>Linear Feet of improvement<br/>in Local Jurisdiction</b> | <b>Local Jurisdiction Cost (%)</b> |  |
|---------------------------|---|------------------------------------|--|
| Riverside County          | 3,450 linear feet   | 36%                                |  |
| Desert Hot Springs        | 3,450 linear feet   | 36%                                |  |
| Palm Springs              | 2,745 linear feet   | 28%                                |  |
| <b>Total</b>              | <b>9,645 linear feet</b>                                    | <b>100%</b>                        |  |