

**PROPOSITION 1E STORMWATER FLOOD MANAGEMENT GRANT APPLICATION
CITY OF PALM SPRINGS
TAHQUITZ CREEK LEVEE RECONSTRUCTION
EXHIBIT B
BUDGET**

**ATTACHMENT NO. 2
SUPPLEMENT INFORMATION
PLANNING/DESIGN/ENGINEERING/ENVIRONMENTAL DOCUMENTATION
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FOLLOWS THIS PAGE**



City Council Staff Report

November 19, 2008

CONSENT CALENDAR

Subject: APPROVAL OF A CONTRACT SERVICES AGREEMENT WITH NOLTE ASSOCIATES, INC., FOR THE TAHQUITZ CREEK LEVEE CERTIFICATION

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Award of this contract will allow the City to proceed with certification of the existing Tahquitz Creek levee, required by federal regulations to demonstrate adequacy of the levee to protect properties from a 100-year flood.

RECOMMENDATION:

- 1) Approve Agreement No. _____ with Nolte Associates, Inc. in the amount of \$148,800 for civil engineering services related to the Tahquitz Creek Levee Certification; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

In 2005, the Federal Emergency Management Agency (FEMA) began work to modernize the Flood Insurance Rate Maps (FIRMs) in Riverside County. On August 22, 2005, FEMA's national office issued "Procedure Memorandum 34", *Interim Guidance for Studies Including Levees*, which requires that all levees on National Flood Insurance Program (NFIP) maps accredited as providing protection from the base (1% annual chance) 100 year flood be certified or re-certified to meet the regulatory requirements found in the Code of Federal Regulations at 44 CFR 65.10. In accordance with Procedure Memorandum 34, any levees not meeting the requirements of 44 CFR 65.10 are to be dis-accredited and the vulnerable areas behind the levees be depicted as floodprone on the new digital FIRMs created out of FEMA's Map Modernization Program.

Item No. **2.K.**

The federal regulation found at 44 CFR 65.10 requires that levees certified by FEMA as providing flood control protection meet or exceed several criteria, such as:

- The top of levee must provide 3 feet of freeboard above the base flood elevation, and must provide 4 feet of freeboard above the base flood elevation 100 feet upstream and downstream of any structure (i.e. bridges)
- All openings through levee must be provided with closure devices that are structural parts of the system during operation
- Engineering analysis must be submitted to demonstrate that no appreciable erosion of the levee embankment can be expected during the 100-year storm
- Engineering analysis must be submitted to demonstrate that seepage of water into or through the levee foundation and embankment will not jeopardize the embankment or levee stability
- Engineering analysis must be submitted to demonstrate that settlement of the levee will not occur, and that freeboard requirements will be maintained
- Engineering analysis must be submitted to demonstrate that during the 100-year flood, interior drainage (or flooding behind the levee) is accommodated
- The levee must be operated (i.e. closure devices and mechanical systems) in accordance with an Operations Plan meeting FEMA requirements and adopted by an agency participating in the NFIP
- The levee must be maintained in accordance with a Maintenance Plan meeting FEMA requirements and adopted by an agency participating in the NFIP

FEMA's Map Modernization Program has provided a public benefit, by compiling all of the previously separate FIRMs into a comprehensive set of digital FIRMs for all of Riverside County, and include color topographic aerial survey information with the flood insurance data, making it much easier to locate specific properties on a digital FIRM to determine flood zone information. However, as a result of FEMA's Map Modernization Program, and its issuance of Procedure Memorandum 34, all communities in Riverside County were required to certify all levees providing flood control protection, otherwise those areas behind the levees previously afforded flood control protection by the levee would be shown in a flood zone – requiring purchase of flood insurance as required by law.

On May 23, 2006, formal letters were distributed by FEMA to the chief executive officers of all communities in Riverside County, including Palm Springs. In this letter, FEMA listed 5 levee systems providing protection from the 100-year storm depicted on the prior FIRMs, requiring certification per 44 CFR 65.10, which include:

- Chino Creek levee
- Whitewater River levee
- Tahquitz Creek levee
- Arenas Canyon levee
- Palm Canyon Wash levee

In Palm Springs, the City's flood protection systems are maintained by Riverside County Flood Control and Water Conservation District (RCFC). In response to the initial FEMA letter, RCFC and many other public agencies and cities (including Palm Springs), communicated the need for much more time to compile the information requested.

As a result, FEMA has allowed all existing levees to be shown on the new digital FIRMs as "Provisionally Accredited Levees", and required communities with those levees to enter into an agreement with FEMA to certify the levees per 44 CFR 65.10 by August 8, 2009. RCFC entered into agreements with FEMA to certify all of the levees it operates and maintains in Riverside County, including the Chino Creek, Whitewater River, Arenas Canyon and Palm Canyon Wash levees. However, as a result of this issue, the City learned that RCFC does not consider the Tahquitz Creek levee located adjacent to Demuth Park and the City's wastewater treatment plant as a levee it owns. This levee was initially constructed many years ago to provide some flood control protection to the sewer plant, and was reconstructed in its present form during construction of the Tahquitz Creek golf course by the City.

Upon learning this fact, the City coordinated with FEMA and entered into an agreement to certify the Tahquitz Creek levee. Therefore, it is the City's responsibility to certify the Tahquitz Creek levee in order for the area behind the levee to remain in an area designated as protected from the 100-year storm. Attachment 1 includes an exhibit of the area in question. If the City is unable to certify this levee per 44 CFR 65.10, the area shown as Zone X will be re-designated as Zone A subject to flooding.

RCFC solicited proposals from professional engineering firms to provide services to certify the levees in Riverside County per 44 CFR 65.10 in 2007. Three firms responded to RCFC's solicitation: Tetra Tech, HDR, and Nolte Associates, Inc. After reviewing the proposals submitted by all three firms, RCFC decided to award contracts to each firm to certify levees in different areas of Riverside County. Based on their selection criteria, RCFC awarded a contract to Nolte Associates, Inc., to certify the Arenas Canyon levee and Palm Canyon Wash levee. The contract was awarded by RCFC on September 4, 2007, and the consultant has been proceeding with certification services of the levees for RCFC.

7.04.050 "Contracting procedures for professional services" of the City's Municipal Code outlines the normal qualifications based procedures for awarding a contract to a professional consulting firm. The Code also allows for sole source procurement, and in consultation with the City Attorney, staff is recommending that a contract be awarded to Nolte Associates, Inc., on the basis of the following facts:

1. RCFC issued a competitive qualifications based solicitation of firms to provide levee certification services for levees located within Riverside County, including levees within Palm Springs;
2. RCFC awarded a professional services contract to Nolte Associates, Inc., in response to their competitive qualifications based solicitation, to provide levee

certification services for the Arenas Canyon and Palm Canyon Wash levees, located in Palm Springs;

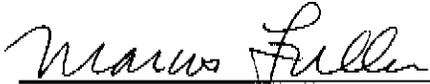
3. Nolte Associates, Inc., has submitted a scope and fee proposal to the City to provide levee certification services for the Tahquitz Creek levee, which fee is comparable to fees approved by RCFC for the Arenas Canyon and Palm Canyon Wash levees;
4. The public interest is best served in ensuring the certification of the Tahquitz Creek levee is completed by August 9, 2009;
5. Nolte Associates, Inc., is ready, willing and able, and represents the most qualified professional consulting firm that is familiar with the requirements of 44 CFR 65.10 as it relates to levee certification, and can complete the certification by August 8, 2009.

Staff has prepared a contract services agreement with Nolte Associates, Inc., which includes a scope to certify the Tahquitz Creek levee. The recommended fee is \$148,800.

FISCAL IMPACT:

Sufficient funds are available in the Drainage Fund accounts 135-4370-55002, 135-4371-50227, 135-4371-55000, 135-4372-55000, 135-4374-55000.

SUBMITTED:


for David J. Barakian
Director of Public Works/City Engineer


Thomas J. Wilson
Assistant City Manager


David H. Ready, City Manager

ATTACHMENTS:

1. Flood Insurance Rate Map exhibit
2. Agreement



CITY CERTIFIED LEVEE SOUTH OF WWTP

AREA TO BE PROTECTED FROM 100-YEAR FLOOD
 PENDING CERTIFICATION OF TAHQUITZ CREEK LEVEE



**CITY OF PALM SPRINGS
CONTRACT SERVICES AGREEMENT
Tahquitz Creek Levee Certification**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this _____ day of _____, 2008, by and between the CITY OF PALM SPRINGS, a California charter city, (herein "City") and **Nolte Associates, Inc.**, (herein "Contractor"). The term Contractor includes professionals performing in a consulting capacity. The parties hereto agree as follows:

1.0 SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal. The Scope of Service shall include the Contractor's proposal or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed and (c) fully understands the facilities, difficulties and restrictions attending performance of the services

under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has, or will, investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000; whichever is less, or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions in Exhibit "B" shall govern.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of **One Hundred Forty-Eight Thousand Eight Hundred Dollars (\$148,800.00)** (herein "Contract Sum"), except as provided in Section 1.8. The method of compensation may include (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of the services, (iii) payment for time and

materials based upon the Contractor's rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates, that Contractor shall not be entitled to additional compensation therefore, and the provisions of Section 1.8 shall not be applicable for such services.

2.2 Method of Payment. Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Contractor wishes to receive payment, no later than the first (1st) working day of such month, Contractor shall submit to the City in the form approved by the City's Director of Finance, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.3, City shall pay Contractor for all expenses stated thereon which are approved by City pursuant to this Agreement no later than the last working day of the month.

3.0 PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", if any, and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services as provided in the Schedule of Performance (Exhibit "D").

4.0 COORDINATION OF WORK

4.1 Representative of Contractor. The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Scott Berkebile, PE, CFM

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

The City's policy is to encourage the awarding of subcontracts to persons or entities with offices located within the jurisdictional boundaries of the City of Palm Springs and, if none are available, to persons or entities with offices located in the Coachella Valley ("Local Subcontractors"). Contractor hereby agrees to use good faith efforts to award subcontracts to Local Subcontractors, if Local Subcontractors are qualified to perform the work required. In requesting for the City to consent to a subcontract with a person or entity that is not a Local

Subcontractor, the Contractor shall submit evidence to the City that such good faith efforts have been made or that no Local Subcontractors are qualified to perform the work. Said good faith efforts may be evidenced by placing advertisements inviting proposals or by sending requests for proposals to selected Local Subcontractors. The City may consider Contractor's efforts in determining whether it will consent to a particular subcontractor. Contractor shall keep evidence of such good faith efforts and copies of all contracts and subcontracts hereunder for the period specified in Section 6.2.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

5.0 INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least \$1,000,000 bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations. The Commercial General Liability Policy shall name the City of Palm Springs as additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in an amount which fully complies with the statutory requirements of the State of California and which includes \$1,000,000 employer's liability.

(c) Business Automobile Insurance. A policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of \$1,000,000 bodily and property damage. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Additional Insurance. Additional limits and coverages, which may include professional liability insurance, will be specified in Exhibit "B".

All of the above policies of insurance shall be primary insurance and issued by companies whose rating satisfies the requirements in Section 5.4 of this agreement. The

insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents, and their respective insurers. In the event any of said policies of insurance are canceled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, endorsements or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance, endorsements, or binders are approved by the City.

The contractor agrees that the provisions of this Section 5.1 shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.3 of this Agreement the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section.

5.2 Indemnification. Contractor agrees to indemnify the City, its officers, agents and employees against, and will hold and save them, and each of them, harmless from any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to the City, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees are made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

5.3 Performance Bond. Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original, notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.4 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "B++ , Class VIII" or better in the most recent edition of Best's Key Rating Guide or in the Federal Register, unless such requirements are waived by the City Manager or designee of the City Manager due to unique circumstances. In the event the City Manager determines that the work or services to be performed under this Agreement create an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed accordingly upon receipt of written notice from the City Manager or designee; provided that the Contractor shall have the right to appeal a determination of increased coverage by the City Manager to the City Council of City within ten (10) days of receipt of notice from the City Manager.

6.0 REPORTS AND RECORDS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.2 Records. Contractor shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be

delivered to City upon request of the Contract Officer or upon the termination of this Agreement. Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and the City shall indemnify the Contractor for all damages resulting therefrom. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Release of Documents. The drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.0 ENFORCEMENT OF AGREEMENT

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

7.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party, in writing, of its contentions by submitting a claim therefor. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's or the Contractor's right to terminate this Agreement without cause pursuant to Section 7.8.

7.3 Retention of Funds. Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an

amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

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

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

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of **Zero Dollars (\$0,00)** as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration Of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause

pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF PALM SPRINGS, P.O. Box 2743, Palm Springs, California 92263. In the case of the Contractor, it should be addressed to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

(SIGNATURES ON FOLLOWING PAGE)

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

ATTEST:

CITY OF PALM SPRINGS,
a California charter city

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

CONTRACTOR: Nolte Associates, Inc.

Check one: Individual Partnership Corporation

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

State of _____ }
County of _____ }ss

State of _____ }
County of _____ }ss

On _____
before me, _____
personally appeared _____

On _____
before me, _____
personally appeared _____

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

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 signatures(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.

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.

Notary Signature: _____

Notary Signature: _____

Notary Seal

Notary Seal

EXHIBIT "A"
SCOPE OF SERVICES

GENERAL SCOPE – The intent of this contract is to provide the City with professional civil engineering services necessary to provide certification of the Tahquitz Creek levee, in accordance with levee criteria set forth in 44 CFR Section 65.10.

Task 1 – Data Collection and Review

Coordinate with City staff to obtain and review documents relevant to the levee certification effort, such as as-built plans, engineering plans, design engineering reports, and geotechnical reports.

Coordinate with FEMA to obtain and review documents relevant to the levee certification effort, such as as-built plans, design engineering reports, geotechnical reports flood insurance studies, and floodplain mapping.

Coordinate with City staff to obtain available documentation for past performance during flood events.

Coordinate with City staff to obtain available documentation regarding past operation and maintenance activities.

Prepare a summary memo to communicate findings about the ability to complete levee certification based on review of available documents.

Task 1 Assumptions:

City will lead efforts to identify and provide relevant documents that are in the City's possession. In support of Contractor's efforts to obtain relevant documents at City facilities the City will coordinate in advance with City staff and provide a project engineer to accompany the Contractor.

City will lead efforts to identify and provide relevant documents that are in the possession of Riverside County Flood Control and Water Conservation District (District) or other local agencies.

In support of Contractor's efforts to obtain relevant documents at local agency facilities the City will coordinate in advance with local agency staff and provide a project engineer to accompany the Contractor.

Contractor has assumed that creation of as-built plans will not be needed and therefore are not part of this scope. If it is determined that as-built plans do not exist, Contractor can create those plans as an additional service.

Task 1 Deliverables
Summary Memo

EXHIBIT "A"
SCOPE OF SERVICES

Task 2 – Field Inspection

Conduct an initial field inspection to visually confirm current conditions, identify potential visible deficiencies and validate available as-built and maintenance information. Items of interest include surface stabilization, unwanted vegetation growth, depressions, erosion, slope stability, cracking, animal control, encroachments, bank stabilization, closure structures and toe drainage systems. Once the field inspection is complete, Contractor shall meet with the City to discuss the findings.

Perform Top of Levee survey to document elevations of existing surface for every 100 feet horizontally along levee reach.

Task 2 Assumptions:

The initial field inspection will consist of visual inspection only. The City will provide assistance as needed so that Contractor and its subconsultants can physically access the levee.

Task 2 Deliverables

Summary memo documenting findings from the field inspection

Task 3 – Freeboard Evaluation

Based on review of available hydrologic and hydraulic studies obtained in Task 1 and field survey data collected by Contractor, determine if the levee provides adequate freeboard between the top of levee elevation and the estimated base flood elevation. Contractor will also create a hydraulic model using best available topography to determine if the levee meets the FEMA freeboard criteria. This hydraulic analysis may also help determine if sediment deposition has occurred in the creek.

Task 3 Assumptions:

The City will collect and provide the 2007 topographic (2-foot contour) data owned by the District for use in the hydraulic modeling of the creek and levee. Revising hydrologic data and calculations will not be included as part of this scope. Flow data will be taken from available hydrologic studies or from the effective FEMA Flood Insurance Study.

Task 3 Deliverables

Summary memo that discusses the adequacy or deficiency of the levee with respect to the FEMA freeboard requirements as defined in 44 CFR Section 65.10.

EXHIBIT "A"
SCOPE OF SERVICES

Task 4 – Closures Evaluation

Based on review of available information obtained in Task 1, determine if existing openings in the levee, such as storm sewers, culverts and road crossings, have adequate closure devices with respect to the FEMA requirements as defined in 44 CFR Section 65.10.

Task 4 Assumptions:

The City can provide design information for all closures incorporated into the levee system. This task does not include preparation of as-builts or design calculations for structural elements needed to close openings in the levee system.

Task 4 Deliverables

Summary memo

Task 5 – Interior Drainage Evaluation

Based on review of available information obtained in Task 1, determine the risk of interior flooding, including the extent of flooded area and water surface elevation.

Task 5 Assumptions:

Existing interior drainage analyses and drainage improvement as-built plans that are available from the City, District, or FEMA will be adequate for levee certification. Effort to refine or modify available interior drainage analyses is excluded, but can be performed as an additional service.

Task 5 Deliverables

Summary memo

Task 6 – Embankment Protection Evaluation

Conduct analyses to evaluate embankment protection from erosion during the base flood, and that anticipated erosion will not result in failure of the levee embankment or foundation directly or indirectly through reduction of the seepage path and subsequent instability.

Task 6 Assumptions:

Adequate hydrologic and hydraulic analyses to support the embankment protection evaluation were obtained and/or completed during Tasks 1 and 3.

EXHIBIT "A"
SCOPE OF SERVICES

Task 6 Deliverables

Summary memo and associated documentation required for submittal to FEMA for levee certification.

Task 7 – Embankment and Foundation Stability Evaluation

Utilize available geotechnical data obtained in Task 1 to perform embankment and foundation stability analyses.

Utilize available geotechnical data obtained in Task 1 to evaluate expected seepage during loading conditions associated with the base flood and demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability.

An extensive field exploration will be conducted to collect any required data not found in the City's archives. In addition to the field exploration, lab testing will occur to analyze the characteristics of each sample taken. These lab tests may include: moisture/density, sieve analysis, hydrometer, Atterberg limits, compaction tests, permeability, consolidation, undrained consolidation (CU) triaxial tests, and direct shear. This scope includes time for coordination with the lab. The subsurface exploration and lab testing will follow the United States Army Corps of Engineers' design guidelines.

Task 7 Assumptions:

Encroachment permitting and right-of-entry to locations will be provided by the City. Access to drilling locations is adequate for drivable equipment. Drill cuttings can be spread around site and/or stored in drums and removed by the City. Contractor will not be responsible for any environmental assessments, handling/storage/disposal of hazardous or contaminated soil, or disposal of drilling spoils.

Task 7 Deliverables

Summary memo of lab test results and field observations

Task 8 – Settlement Potential Evaluation

Based on review of available information obtained in Task 1, confirm that adequate engineering analyses to evaluate settlement potential and magnitude of future losses of freeboard from settlement were performed. If adequate engineering analyses were not obtained in Task 1, utilize geotechnical data collected during the field exploration and lab tests in Task 7 to evaluate settlement potential.

EXHIBIT "A"
SCOPE OF SERVICES

Once technical analyses discussed in Tasks 3 through 8 are completed, Contractor will meet with the City to discuss the results.

Task 8 Assumptions

Adequate geotechnical information to support completion of settlement potential evaluation was completed under Task 7.

Task 8 Deliverables

Summary memo and associated documentation required for submittal to FEMA for levee certification.

Task 9 – Operation and Maintenance Plan

Complete updates to the City's current operation and maintenance plan to meet FEMA minimum requirements.

Identify maintenance deficiencies that may prevent levee certification and develop recommended maintenance tasks needed for certification.

Task 9 Assumptions

Pertinent operation and maintenance information is provided during Task 1. City staff will be responsible for participating in the development, review, and approval of the Draft and Final Operation and Maintenance Plan prepared by Contractor.

Task 9 Deliverables

Draft Operation and Maintenance Plan
Final Operation and Maintenance Plan

Task 10 – Levee Certification Submittal Preparation

Prepare a draft levee certification submittal for City review with all information, forms, plans and maps to meet FEMA certification requirements. Prepare and transmit to FEMA a final submittal with all information, forms, plans and maps to meet FEMA certification requirements. Submit all information to FEMA and the City in both digital and hard copy format. Submit to the City two (2) copies of the back up information for each levee substantiating that each meets or exceeds the certification criteria.

If the levee does not meet FEMA's levee certification criteria, Contractor will prepare a report that clearly indicates what deficiencies exist (freeboard, maintenance, structural, etc.), their

EXHIBIT "A"
SCOPE OF SERVICES

location, and include a detailed recommendation of measures that need to be taken to remedy each deficiency.

Task 10 Assumptions

Submit to the City up to two (2) copies of the draft and final levee certification submittal in hard copy and digital formats.

Task 10 Deliverables

Draft and Final Levee Certification Submittal if levee meets FEMA certification requirements
Report identifying deficiencies with recommended measures if levee does not meet FEMA certification requirements

END OF EXHIBIT "A"

EXHIBIT "B"
SPECIAL REQUIREMENTS

As specified in Section 5.1 (d), Additional Insurance, the following insurance policy shall be required:

Professional Errors and Omissions Insurance. A policy of Professional Errors and Omissions Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim and in the aggregate with respect to loss arising from the actions of the Contractor performing professional services hereunder on behalf of the City.

Section 5.3, Performance Bond, is deleted.

Section 7.7, Liquidated Damages, is waived.

END OF EXHIBIT "B"

EXHIBIT "C"
SCHEDULE OF COMPENSATION

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Contractor shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Contractor based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Contractor's statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

	<u>Task Total Lump Sum</u>
Task 1, Data Collection and Review	\$15,200.00
Task 2, Field Inspection	\$31,500.00
Task 3, Freeboard Evaluation	\$6,500.00
Task 4, Closures Evaluation	\$1,600.00
Task 5, Interior Drainage Evaluation	\$2,800.00
Task 6, Embankment Protection Evaluation	\$11,000.00
Task 7, Embankment and Foundation Stability Evaluation	\$47,200.00
Task 8, Settlement Potential Evaluation	\$14,800.00
Task 9, Operation and Maintenance Plan	\$7,800.00
Task 10, Levee Certification Submittal Preparation	\$10,400.00
Total	\$148,800.00

END OF EXHIBIT "C"

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

Task Duration (estimated from Notice to Proceed)

- 1 - Data Collection & Review 10 weeks
- 2 - Field Investigation 4 weeks after Task 1 - includes time to perform Top of Levee survey
- 3 - Freeboard Evaluation 2 weeks after Task 2
- 4 - Closures Evaluation 2 weeks after Task 2
- 5 - Interior Drainage Evaluation 2 weeks after Task 2
- 6 - Embankment Protection Evaluation 6 weeks after Task 2
- 7 - Embankment and Foundation Stability Evaluation 6 weeks after Task 2
- 8 - Settlement Potential Evaluation 6 weeks after Task 2
- 9 - Operation & Maintenance Plan 4 weeks after Task 8
- 10 - Levee Certification Submittal Package 4 weeks after Task 9

TOTAL 28 weeks

RESOLUTION NO.

OF THE CITY COUNCIL OF THE CITY OF PALM
SPRINGS, CALIFORNIA, AMENDING THE BUDGET
FOR THE 2008-09 FISCAL YEAR.

WHEREAS Resolution 22265 approving the budget for the fiscal year 2008-09 was adopted on June 18, 2008; and

WHEREAS the City Manager has recommended, and the City Council desires to approve, certain amendments to said budget;

NOW THEREFORE BE IT RESOLVED that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and that Resolution 22265, adopting the budget for the 2008-09 fiscal year is hereby amended as follows:

SECTION 1. ADDITION

Fund	Activity	Account	Amount
135	4371	*(to be created)	\$200,000

Purpose Tahquitz Creek Levee Certification

SECTION 2. SOURCE Drainage Fund Balance

Fund	Activity	Account	Amount
135		29301	\$200,000

ADOPTED THIS 19th day of November, 2008.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on November 19, 2008, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California



City Council Staff Report

Date: September 8, 2010

CONSENT CALENDAR

Subject: APPROVAL OF AMENDMENT NO. 1 TO A CONTRACT SERVICES AGREEMENT WITH NOLTE ASSOCIATES, INC., FOR THE TAHQUITZ CREEK LEVEE CERTIFICATION

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Approve Amendment No. 1 to the contract with Nolte Associates, Inc., for additional civil, geotechnical and environmental services necessary to prepare plans and specifications for future construction of required improvements to the levee necessary to satisfy federal regulations to ensure the levee provides flood control protection to properties behind it.

RECOMMENDATION:

- 1) Approve Amendment No. 1 to Agreement No. 5755 with Associates, Inc. in an amount of \$208,300 for a revised total contract amount of \$357,100 for additional civil, geotechnical and environmental services related to the Tahquitz Creek Levee Certification; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

In 2005, the Federal Emergency Management Agency (FEMA) began work to modernize the Flood Insurance Rate Maps (FIRMs) in Riverside County. On August 22, 2005, FEMA's national office issued "Procedure Memorandum 34", *Interim Guidance for Studies Including Levees*, which requires that all levees on National Flood Insurance Program (NFIP) maps accredited as providing protection from the base (1% annual chance) 100 year flood be certified or re-certified to meet the regulatory requirements found in the Code of Federal Regulations at 44 CFR 65.10. In accordance with Procedure Memorandum 34, any levees not meeting the requirements of 44 CFR 65.10 are to be decertified and the vulnerable areas behind the levees are to be shown as

ITEM NO. 2.I.

floodprone on the new digital FIRMs created out of FEMA's Map Modernization Program.

The federal regulation found at 44 CFR 65.10 requires that levees certified by FEMA as providing flood control protection meet or exceed several criteria, such as:

- The top of levee must provide 3 feet of freeboard above the base flood elevation, and must provide 4 feet of freeboard above the base flood elevation 100 feet upstream and downstream of any structure (i.e. bridges)
- All openings through levee must be provided with closure devices that are structural parts of the system during operation
- Engineering analysis must be submitted to demonstrate that no appreciable erosion of the levee embankment can be expected during the 100-year storm
- Engineering analysis must be submitted to demonstrate that seepage of water into or through the levee foundation and embankment will not jeopardize the embankment or levee stability
- Engineering analysis must be submitted to demonstrate that settlement of the levee will not occur, and that freeboard requirements will be maintained
- Engineering analysis must be submitted to demonstrate that during the 100-year flood, interior drainage (or flooding behind the levee) is accommodated
- The levee must be operated (i.e. closure devices and mechanical systems) in accordance with an Operations Plan meeting FEMA requirements and adopted by an agency participating in the NFIP
- The levee must be maintained in accordance with a Maintenance Plan meeting FEMA requirements and adopted by an agency participating in the NFIP

FEMA's Map Modernization Program has provided a public benefit, by compiling all of the previously separate FIRMs into a comprehensive set of digital FIRMs for all of Riverside County, and include color topographic aerial survey information with the flood insurance data, making it much easier to locate specific properties on a digital FIRM to determine flood zone information. However, as a result of FEMA's Map Modernization Program, and its issuance of Procedure Memorandum 34, all communities in Riverside County were required to certify all levees providing flood control protection, otherwise those areas behind the levees previously afforded flood control protection by the levee would be shown in a flood zone – requiring purchase of flood insurance as required by law.

On May 23, 2006, formal letters were distributed by FEMA to the chief executive officers of all communities in Riverside County, including Palm Springs. In this letter, FEMA listed 5 levee systems providing protection from the 100-year storm depicted on the prior FIRMs, requiring certification per 44 CFR 65.10, which include:

- Chino Creek levee
- Whitewater River levee
- Tahquitz Creek levee
- Arenas Canyon levee

- Palm Canyon Wash levee

In Palm Springs, the City's flood protection systems are maintained by Riverside County Flood Control and Water Conservation District (RCFC). In response to the initial FEMA letter, RCFC and many other public agencies and cities (including Palm Springs), communicated the need for much more time to compile the information requested.

As a result, FEMA has allowed all existing levees to be shown on the new digital FIRMs as "Provisionally Accredited Levees", and required communities with those levees to enter into an agreement with FEMA to certify the levees per 44 CFR 65.10 by August 8, 2009. RCFC entered into agreements with FEMA to certify all of the levees it operates and maintains in Riverside County, including the Chino Creek, Whitewater River, Arenas Canyon and Palm Canyon Wash levees, and the City coordinated with FEMA and entered into an agreement to certify the Tahquitz Creek levee adjacent to the treatment plant and City golf course. Therefore, it is the City's responsibility to certify the Tahquitz Creek levee in order for the area behind the levee to remain in an area designated as protected from the 100-year storm. Attachment 1 includes an exhibit of the area in question. If the City is unable to certify this levee per 44 CFR 65.10, the area shown as Zone X will be re-designated as Zone A subject to flooding.

On November 19, 2008, the City Council approved a contract services agreement with Nolte Associates, Inc., to provide the city with professional services necessary to evaluate whether the Tahquitz Creek levee could be certified pursuant to the FEMA regulations. As a result of its work, Nolte Associates confirmed that the existing levee does not meet freeboard and other requirements, and the City has been unable to submit required evidence to FEMA necessary to demonstrate that the levee meets its requirements. Therefore, unless the City moves forward with design and construction of required improvements to the levee, FEMA will revise the FIRMs and show the properties behind the levee as being subject to the 100-year flood.

Staff has prepared an amendment to the contract services agreement with Nolte Associates, Inc., which includes additional civil, geotechnical and environmental services to prepare plans and specifications to construct improvements to the Tahquitz Creek levee necessary to comply with FEMA's regulations. The negotiated fee for the additional services is \$208,300.

FISCAL IMPACT:

Sufficient funds are available in the Drainage Fund account 135-4372-55005.

SUBMITTED:

Prepared by:



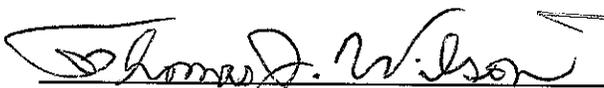
Marcus L. Fuller
Assistant Director of Public Works

Recommended by:



David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Flood Insurance Rate Map exhibit
2. Amendment No. 1 to Agreement No. 5755

ATTACHMENT 1
FLOOD INSURANCE RATE MAP EXHIBIT

ATTACHMENT 2

AMENDMENT NO. 1 TO AGREEMENT NO. 5755

AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT NO. 5755
WITH NOLTE ASSOCIATES, INC
TAHQUITZ CREEK LEVEE CERTIFICATION, CITY PROJECT 08-26

The following articles of Agreement No. 5755 are hereby amended to read as follows:

SECTION 2.1 Maximum contract amount is amended to Three Hundred Fifty-Seven Thousand One Hundred Dollars (\$ 357,100.00).

SCOPE OF SERVICES (Exhibit "A") – Additional civil, geotechnical and environmental services to prepare plans and specifications to address Tahquitz Creek levee freeboard and other deficiencies will be provided. See attached Exhibit "A".

SCHEDULE OF COMPENSATION (Exhibit "C") –

See attached Exhibit "C".

SCHEDULE OF PERFORMANCE (Exhibit "D") –

See attached Exhibit "D".

Purchase Order Number(s):	09-0703
Agreement Number:	5755
Original City Council Approval:	November 19, 2008
Original Resolution Number:	N/A
Original Contract Amount:	\$ 148,800
Amount of Previous Increase(s)	\$ 0
Amount of This Increase	\$ 208,300
Amended Total:	\$ 357,100
Account Number(s):	135-4372-55005

SIGNATURES ON LAST PAGE

Except as specifically amended by this Amendment No. 1, all terms and provisions of Agreement No. 5755 remain in full force and effect.

ATTEST:

CITY OF PALM SPRINGS,
a California charter city

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

CONTRACTOR: Check one: Individual Partnership Corporation

Corporations require two notarized signatures: One signature **must** be from the Chairman of Board, President, or any Vice President. The second signature **must** be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: _____
Notarized Signature of Chairman of Board,
President or any Vice President

By: _____
Notarized Signature Secretary, Asst Secretary,
Treasurer, Asst treasurer or Chief Financial Officer

Name: _____

Name: _____

Title: _____

Title: _____

State of _____ }

State of _____ }

County of _____ }ss

County of _____ }ss

On _____ before me,

On _____ before me,

personally _____ appeared

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

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.

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.

WITNESS my hand and official seal.

Notary Signature: _____

Notary Signature: _____

Notary Seal:

Notary Seal:

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Exhibit "A"
Additional Scope of Services
Tahquitz Creek Levee Certification, City Project 08-26

Final Plans, Specifications and Estimate

General: Contractor shall provide civil and geotechnical design plans and environmental documents within Tahquitz Creek in the City of Palm Springs. Contractor shall provide civil and geotechnical engineering and environmental services for the levee improvements along the north side of Tahquitz Creek in the City of Palm Springs in accordance with the scope of services outlined below. The site is within Tahquitz Creek along the north side of the creek from Gene Autry Bridge upstream approximately one mile to where the existing levee ties into Demuth Park. The services to be provided are based on the geotechnical evaluation performed during the levee certification analyses in August 2009. The results of the geotechnical investigation indicated the levee system requires additional revetment protection and remedial measures to mitigate the landside and riverside slopes.

SCOPE OF WORK

1.0 CIVIL AND GEOTECHNICAL DESIGN

Task 1.1 Aerial and Field Survey

Contractor shall conduct a topographic survey, based upon aerial photogrammetry showing one-foot contours and prominent photographable surface features, to U.S. mapping standards and FEMA Guidelines & Specifications standards. Contractor shall also perform a supplemental field survey to locate existing site features not found during the aerial photogrammetry. Contractor shall process the field and aerial data and generate one-foot contour data for use in the civil and geotechnical design.

Task 1.2 30% Design Plans

Contractor shall prepare 30% design plans and supplemental specifications for the project based on design criteria outlined in the kick-off meeting. The list of technical construction specification supplements shall be based on CALTRANS Specifications (or other published specifications as directed by the City of Palm Springs).

Contractor shall prepare an Erosion Control Plan based on the grading plans. The Erosion Control Plan shall illustrate the measures, or Best Management Practices (BMPs), taken to reduce soil from eroding and discharging offsite.

Contractor shall prepare one set of hydraulic calculations, to verify the water surface elevation of the channel does not cause any freeboard deficiencies with the levee. Contractor shall also perform scour calculations to determine the possible scour depths caused by the 100-year storm event in Tahquitz Creek. Equations from the Hydraulic Engineering Circular No. 18 (May 2001) published by the Federal Highway Administration will be the basis of the scour analysis. A Technical Memorandum shall be done to summarize the results.

Contractor shall process the plans with the City.

Deliverables

Deliverables include two (2) hard copies of the 30% design plans, Erosion Control Plan, and Technical Memorandum to the City.

Task 1.3 60% Design Plans

Contractor shall prepare 60% design plans and supplemental specifications for the project based on review comments from the City for the 30% design plans. Contractor shall also prepare an Engineer's estimate of probable construction cost that will be submitted in tabular form and on a unit cost basis. Pay items of work shall conform to CALTRANS standards as applicable.

Contractor shall revise to the Erosion Control Plan based on comments from the City's review of the 30% design plans. Contractor shall also revise the hydraulic calculations to account for changes made during the 60% design.

Deliverables

Deliverables include two (2) hard copies of the 60% design plans and Erosion Control Plan to the City.

Task 1.4 90% Design Plans

Contractor shall prepare 90% design plans and supplemental specifications for the project based on review comments from the City for the 60% design plans. Contractor shall also revise the Engineer's estimate of probable construction cost. Pay items of work shall conform to CALTRANS standards as applicable.

Contractor shall revise the Erosion Control Plan based on comments from the City's review of the 60% design plans. Contractor shall also revise the hydraulic calculations to account for changes made during the 90% design.

Deliverables

Deliverables include two (2) hard copies of the 90% design plans and Erosion Control Plan to the City.

Task 1.5 Final Design Plans

Contractor shall meet with the City to finalize responses to review comments and resolve all outstanding issues.

Contractor shall prepare final design plans and supplemental specifications for the project based on review comments from the City for the 90% design plans. Contractor shall also revise the Engineer's estimate of probable construction cost. Pay items of work shall conform to CALTRANS standards as applicable.

Contractor shall revise the Erosion Control Plan based on comments from the City's review of the 90% design plans. Contractor shall also revise the hydraulic calculations to account for changes made during the final design.

Contractor shall revise the geotechnical analyses performed as part of the levee certification project to incorporate the final design of the levee improvements. The goal of these revised analyses is to show that the levee meets FEMA's requirements outlined in 44 CFR 65.10.

Contractor shall prepare the levee certification package for submittal to the City. Since the PAL period has expired, FEMA will require a formal Letter of Map Revision (LOMR) be submitted and approved to accredit the levee system. The levee certification package that Contractor shall prepare will be in the form of a Conditional Letter of Map Revision (CLOMR). The CLOMR will

be submitted to the City for review and signatures prior to submittal to FEMA. The intent will be for FEMA to approve the levee improvements prior to construction to ensure that the improvements will lead to re-certification of the levee system.

Deliverables

Deliverables include two (2) hard copies of the Final design plans, Erosion Control Plan, and Levee Certification Package.

2.0 TECHNICAL STUDIES

Task 2.1 Biological Resources Technical Study

To understand the existing environmental setting on site, Contractor shall conduct a general biological reconnaissance survey of the project area to inventory existing biological resources and create a baseline biological resources map with vegetation communities and conspicuous sensitive species locations. Vegetation communities will be mapped according to Sawyer Keeler-Wolfe nomenclature, where feasible. During the field survey, a general inventory of plant and animal species detected by sight, calls, tracks, scat, or other signs will be compiled, as well as a determination of potential sensitive species that could occur in the project area based on habitats present. Observable sensitive resources including perennial plants and conspicuous wildlife (i.e., birds and some reptiles) commonly accepted as regionally sensitive by the California Native Plant Society (CNPS), the California Department of Fish and Game (CDFG), the U.S. Fish and Wildlife Service (USFWS), and the Coachella Valley Multiple Species Habitat Conservation Program (MSHCP) will be recorded and later digitized into a Geographic Information System (GIS) format and added to the Biological Resources Map.

Concurrent with the vegetation mapping effort, Contractor shall identify any lands within the project area that may be under the jurisdiction of the ACOE, CDFG, and Regional Water Quality Control Board (RWQCB) as waters of the U.S., including wetlands. In the event that waters of the U.S., including wetlands, are not present within the project area, then Task 2.3 of this proposal will be eliminated from the scope of work. Evidence of hydrophytic vegetation, hydric soils, and channel hydrology will be reviewed, if present. Non-wetland waters of the U.S. will be delineated based on the limits of an ordinary high water mark (OHWM), saturation, permanence of surface water, wetland vegetation, and nexus to a traditional navigable water of the U.S. (TNW). The recent ACOE/EPA Rapanos Guidance states that the ACOE will regulate traditional, navigable waters of the U.S., adjacent wetlands, and relatively permanent waters (RPW) tributary to TNWs and adjacent wetlands. Non-navigable tributaries that are not relatively permanent waters (non-RPW) and wetlands adjacent to such tributaries are assessed on a case-by-case basis to determine whether they have a significant nexus to a traditional navigable water of the U.S. CDFG-jurisdictional riparian areas will be delineated to the limits of hydrophytic vegetation associated with stream channels; unvegetated stream channels under the jurisdiction of CDFG will be delineated to the limits of the stream bank, if present. Areas regulated by the RWQCB are generally coincident with the ACOE, but can include features isolated from navigable waters of the U.S. that have evidence of surface water inundation.

All mapping will be done in the field directly on a 200-scale (1 inch = 200 feet) or finer base map with the project boundary, topographic or color aerial photograph base. Where feasible and necessary, boundaries and data station points will be delineated using a Global Positioning System (GPS) unit and later downloaded into ArcView.

Following completion of the fieldwork, all jurisdictional polygons and line features will be digitized using ArcGIS software and a GIS coverage will be created. Once in ArcGIS, the acreage of each jurisdictional area will be determined. The results of this analysis will be presented to the City in an abbreviated technical memorandum for their records. If jurisdictional

waters of the U.S., including wetlands, are present in the project area, all data collected during the survey will be analyzed to determine the extent of jurisdictional resources in the project area and to determine if these resources will be potentially directly impacted by the proposed improvements.

Please note that coordinating with the USFWS on the presence/absence of Casey's June beetle (*Dinacoma caseyi*), a species that was proposed for listing by the USFWS as endangered in July 2009, is not included in this scope of work as it is assumed that the proposed improvements will not adversely impact critical habitat for this species. In the event that no wetlands permits are required but critical habitat appears to be present in the project area based on the presence of known primary constituent elements (PCEs) (i.e., soils, vegetation, etc.) then a contract augment will be necessary to coordinate with the USFWS on this issue.

Task 2.2 Preliminary Design Review and Analysis

Once the biological resource data has been digitized to create a biological resources map, Contractor shall coordinate with the City to analyze one (1) project design concept. This design concept will be analyzed to determine if direct impacts to waters of the U.S. and other sensitive biological resources will occur and to what extent. A GIS exhibit showing the existing biological conditions will be presented to the City as a pdf and as a CAD file for use in the design development process.

Task 2.3 Wetlands Permitting (Optional Task)

Based on our understanding of the current project, the proposed levee improvements may result in direct impacts to waters of the U.S., including wetlands. Wetlands permitting is dependent on the presence of resources in proximity to the existing levee and if jurisdictional resources are not identified near the existing levee during Task 2.2, then this task will not be required. The cost estimates provided below all include the assumption that permit applications will be prepared within three months of initiation of the contract and permits will be issued within nine months of submittal to the agencies (i.e., a total work period of 12 months). During the permit processing period, Contractor shall coordinate with the wetlands regulatory agencies including attending up to six project meetings with any combination of regulatory agencies and/or project team members. If the permit process requires additional time, an amended scope of work and cost estimate can be provided.

Section 404 Nationwide Permit (Pre-Construction Notification)

This scope of work and cost estimate assumes that the proposed project will qualify for the Nationwide Permit Program, which requires impacts to waters of the U.S. to be less than 0.5 acre. The Nationwide Permit (NWP) is assumed to be most appropriate for the project is (NWP) 14, with a required pre-construction notification (PCN). Among other thresholds, authorization under this permit allows for impacts for modifications or improvements to existing linear transportation facilities including trails, paths, and walkways of up to 0.50 acre of jurisdictional waters or wetlands.

Under this task, the Contractor shall submit a Pre-Construction Notification to the USACE regulatory branch, which will include the following information: a detailed, technically accurate project description; a statement of purpose and need; discussion of avoidance and minimization of impacts; vegetation mapping data; results of the wetlands delineation; a conceptual wetlands mitigation plan; associated figures (vicinity maps, project site map, construction/grading cross-sections, mitigation area, etc.); and copies of the permit applications submitted to the RWQCB and CDFG. Contractor shall coordinate with USACE staff following the submission of the PCN, including attending meetings and providing as-needed correspondence during the permit processing period.

Section 401 Water Quality Certification Application

Contractor shall complete and submit an application for a Section 401 Water Quality Certification to RWQCB. The application will include the project location and existing conditions, a project description and impact analysis, existing functions and values of the affected drainages, a conceptual wetlands mitigation and monitoring plan, a discussion of beneficial uses, proposed measures to prevent impacts to water quality, measures to maintain and improve water quality, all associated figures (vicinity maps, project site map, construction/grading cross sections, mitigation area, etc.), and copies of the wetlands permit application submitted to the USACE and CDFG. Contractor shall coordinate with RWQCB staff following the submission of the application, including attending meetings and providing as needed correspondence during the permit processing period. This task does not include processing of a Waste Discharge Requirement (WDR), which would be required to permit impacts to isolated waters of the State that are not under federal wetlands jurisdiction or for projects of large dredge volume. It is not anticipated that a WDR will be required; however, if it is, an additional scope of work would be required.

Section 1602 Streambed Alteration Agreement

Contractor shall submit to the CDFG an application for a Section 1602 Streambed Alteration Agreement. The application will include a project description, a statement of purpose and need, an impacts analysis, a discussion of avoidance and minimization of impacts, the wetland delineation report, a draft mitigation plan, all associated figures (vicinity maps, project site map, construction/grading cross-sections, mitigation area, etc.) and copies of the wetland permit applications submitted to the RWQCB and USACE. Contractor shall coordinate with RWQCB staff following the submission of the application, including attending meetings and providing as needed correspondence during the permit processing period.

USFWS Conference on Proposed Species and Critical Habitat

On July 9, 2009, the USFWS issued a proposal in the Federal Register to list the Casey's June beetle (*Dinacoma caseyi*) as endangered under the federal Endangered Species Act and to designate critical habitat on approximately 777 acres of land, including a substantial segment of Palm Canyon Wash, in the south Palm Springs area of Riverside County, California. Of the estimated 777 acres of proposed critical habitat, approximately 343 acres are on Agua Caliente Tribal lands and 434 acres are on private and locally owned lands. Proposed critical habitat includes areas west of South Palm Canyon Drive, Palm Canyon Wash, Smoketree Ranch, and two areas east of Palm Canyon Wash and south of East Palm Canyon Drive. Approximately 45% of proposed critical habitat is on Agua Caliente Tribal land. All areas located in proposed critical habitat designation areas will likely be considered occupied by Casey's June beetle. The USFWS reports that the largest single collection of Casey's June beetle, totaling over 70 males during the first 15 minutes of trapping, was recorded from Palm Canyon Wash just upstream of the confluence of Tahquitz Creek with Palm Canyon Wash, in April 2003.

While the proposed project is not located in an area proposed for designation as critical habitat, there could be potential habitat for Casey's June beetle at the confluence of Tahquitz Creek with Palm Canyon Wash, especially if appropriate soils and intact Sonoran desert scrub or native desert wash vegetation is present. If suitable habitat for this species is present within the project area, namely at the confluence of Tahquitz Creek with Palm Canyon Wash, then coordination with the USFWS is recommended.

Because Casey's June beetle is not currently listed endangered nor has critical habitat been approved for this species, a Section 7 Consultation with the USFWS is currently not warranted. However, if a species is proposed for listing at the start of the permit application process, that species along with any critical habitat designations proposed in the *Federal Register* for listing

are subject to the conferencing process established in 50 CFR Section 402.10. Conference is a process of early interagency coordination, similar to the consultation process, involving informal or formal discussions between the USACE and USFWS pursuant to Section 7(a)(4) of the Endangered Species Act regarding the potential impact of a project or action on proposed species and/or proposed critical habitat. A conference may also involve informal discussions between the USFWS, the USACE, and the City. The conference procedure is designed to help Federal agencies identify and resolve potential conflicts between Federal actions and species conservation by developing recommendations to minimize or avoid adverse effects on proposed species or proposed critical habitat.

Under this task, Contractor shall provide up to 10 hours of initial coordination with the USFWS and USACE to confirm that the proposed project will avoid impacts to Casey's June beetle and that this species will not be jeopardized by implementation of the proposed improvements. This may include the preparation and provision of project maps, a review of existing literature and research relative to this species, phone calls, fax and email transmissions between City, USFWS, Contractor, and up to one (1) office meeting with USFWS staff to review the project grading plan and proposed project impacts.

This task is currently optional and is dependent on (a) the identification of waters of the U.S., including wetlands, in the project area and (b) impacts to jurisdictional resources resulting from the project.

EXHIBIT "C"
SCHEDULE OF COMPENSATION

Tasks listed below are identical to tasks identified in Exhibit A of this Agreement. Payments to Contractor shall be made no more frequently than monthly, and shall be based on lump sum costs per task item of work as indicated herein. Lump sum payments shall be made to Contractor based upon completion of tasks, or pro-rata portions thereof noted below, to a maximum of 75% of the lump sum task item fee until completion of such task item as determined by the Contract Officer. Each request for payment shall contain Contractor's statement of the work or tasks completed or portion performed, with supporting documentation. The determination of payment due shall be made based upon the reasonable judgment of the Contract Officer.

	<u>Task Total Lump Sum</u>
Phase 1 – Tahquitz Creek Levee Certification	
Task 1, Data Collection and Review	\$15,200.00
Task 2, Field Inspection	\$31,500.00
Task 3, Freeboard Evaluation	\$6,500.00
Task 4, Closures Evaluation	\$1,600.00
Task 5, Interior Drainage Evaluation	\$2,800.00
Task 6, Embankment Protection Evaluation	\$11,000.00
Task 7, Embankment and Foundation Stability Evaluation	\$47,200.00
Task 8, Settlement Potential Evaluation	\$14,800.00
Task 9, Operation and Maintenance Plan	\$7,800.00
Task 10, Levee Certification Submittal Preparation	\$10,400.00
Phase 1 Total	\$148,800.00
Phase 2 – Final Plans, Specifications and Estimate	
Task 1.1, Aerial and Field Survey	\$16,900.00
Task 1.2, 30% Design Plans	\$60,100.00
Task 1.3, 60% Design Plans	\$23,400.00
Task 1.4, 90% Design Plans	\$18,300.00
Task 1.5, Final Design Plans	\$58,400.00
Task 2.1, Biological Resources Technical Study	\$3,800.00
Task 2.2, Preliminary Design Review and Analysis	\$1,400.00
Task 2.3, Wetlands Permitting (Optional)	\$26,000.00
Phase 2 Total	\$208,300.00
Project Total	\$357,100.00

END OF EXHIBIT "C"

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

Phase 1 – Tahquitz Creek Levee Certification

Task Duration (estimated from Notice to Proceed for Phase 1)

- 1 - Data Collection & Review 10 weeks
- 2 - Field Investigation 4 weeks after Task 1 - includes time to perform Top of Levee survey
- 3 - Freeboard Evaluation 2 weeks after Task 2
- 4 - Closures Evaluation 2 weeks after Task 2
- 5 - Interior Drainage Evaluation 2 weeks after Task 2
- 6 - Embankment Protection Evaluation 6 weeks after Task 2
- 7 - Embankment and Foundation Stability Evaluation 6 weeks after Task 2
- 8 - Settlement Potential Evaluation 6 weeks after Task 2
- 9 - Operation & Maintenance Plan 4 weeks after Task 8
- 10 - Levee Certification Submittal Package 4 weeks after Task 9

TOTAL 28 weeks

Phase 2 – Final Plans, Specifications and Estimate

Task Duration (estimated from Notice to Proceed for Phase 2)

Item	Task	Starting Week	Ending Week	Duration
1	1.1 - Aerial and Field Survey	1	4	4 weeks
2	2.1 - Biological Resources Study	1	8	4 weeks
3	1.2 - 30% Design Plans	5	13	8 weeks
4	2.2 - Preliminary Design Review and Analysis	10	12	2 weeks
5	City review of 30% Design Plans	14	16	3 weeks
6	1.3 - 60% Design Plans	17	24	8 weeks
7	City review of 60% Design Plans	25	26	2 weeks
8	1.4 - 90% Design Plans	27	31	5 weeks
9	City review of 90% Design Plans	32	33	2 weeks
10	1.5 - Final Design Plans	34	39	5 weeks
11	1.5 - Additional Geotechnical Analyses for Levee Certification	39	42	4 weeks
12	1.5 - Prepare Conditional Letter of Map Revision	39	44	6 weeks
TOTAL				44 weeks

Notes: 1. Permitting time is dependent on the resource agencies.
2. If Wetlands Permitting (Task 2.3) is required and started at week 17, then project duration will increase by 52 weeks to a total of 69 weeks.