

CITY OF COACHELLA

PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 5th day of **May, 2015**, by and between the City of Coachella, a municipal organization organized under the laws of the State of California with its principal place of business at 1515 Sixth Street, Coachella, California 92236 ("City") and **ATHALYE Consulting Engineering Services, Inc., a CORPORATION**, with its principal place of business at 26457 Rancho Parkway South, Lake Forest CA 92630 ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Professional Engineering Services** to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.3 Project. City desires to engage Consultant to render such services for the **Avenue 50 Bridge Over Coachella Valley Stormwater Channel (aka Whitewater River) Project, City Project No. 2015-01, Federal Aid Project No. BR-NBIL (536)** ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional engineering consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from May 5, 2015 to June 30, 2017, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. City alone (not the Consultant) shall have the option to extend the term of this Agreement for

two (2) successive one (1) year periods (individually, “Subsequent Term” and collectively, “Subsequent Terms”) on the same terms and conditions as set forth in this Agreement (including, without limitation, the rates set forth in the Compensation Schedule attached hereto as Exhibit “C” and incorporated by reference herein); provided however, that the amount of the total compensation, including authorized reimbursements, for any Services rendered in any Subsequent term(s) (if such Subsequent Term(s) is desired by City), shall not exceed the amount required to be appropriated by City, in its sole and absolute discretion. Such extension(s) shall be made by City providing written notice to Consultant. Consultant shall complete the Services within the applicable Term of the Agreement, and shall meet any other established schedules and deadlines as may be set by City staff on an on-call and as-needed basis from time to time.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant’s exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant’s conformance with the Schedule, City shall respond to Consultant’s submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a

threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Andy Cheah, PE-Project Manager**

3.2.5 City's Representative. The City hereby designates **Jonathan Hoy, PE-City Engineer**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Andy Cheah, PE-Project Manager**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing

it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: One Million Dollars (\$1,000,000) per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and

volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Nine Hundred Ninety Nine Thousand Eight Hundred Twenty Nine Dollars (\$999,829.00)** without written approval of City Manager. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City’s Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars (\$1,000) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

<u>City</u>	<u>Consultant</u>
City of Coachella	ATHALYE Consulting Engineering Services, Inc.
1515 Sixth Street	26457 Rancho Parkway South
Coachella, CA 92236	Lake Forest, CA 92630
Attn: Jonathan Hoy, PE	Attn: Andy Cheah, PE
City Engineer	Project Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in

connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any such judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration

contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

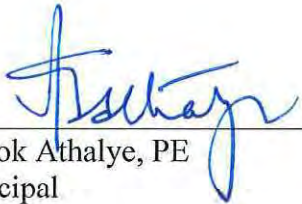
3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE.]

CITY OF COACHELLA

**ATHALYE Consulting Engineering
Services, Inc.**

By: 
David Garcia
City Manager

By: 
Ashok Athalye, PE
Principal

[or]

By: N/A
Steven Hernandez
Mayor

Attest:

By: 
for Beatrice Barajas *5/13/2015*
City Clerk

Approved as to Form:



**** Approved Form ****
Best Best & Krieger LLP
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

Exhibit A

SCOPE OF SERVICES

The scope of work generally includes preliminary and design engineering, environmental document, and project management services necessary to pursue CEQA and NEPA environmental approvals for, and to complete the design of a new structural bridge spanning over Coachella Valley Storm Channel and roadway approaches on both ends.

It is anticipated that the scope of work will include: Engineer's Report/Environmental Document ("ER/ED"); and optional services of delivering the Plans, Specifications and Estimate (PS&E) Package, support services for Right of Way (ROW) Engineering, and construction management services including preparation of the as-built package.

Project management services shall be provided throughout all phases of the work.

The plans, designs, reports, and other documents furnished under this Scope of Services will be of a quality acceptable to the City and Caltrans Local Assistance. Criteria for acceptance of the deliverables will include a neat appearance, must be organized and technically and grammatically correct, reflect incorporation of City review comments, and the work will have been checked and meet all of the contract requirements.

The following Scope of Work represents the minimum effort needed to complete the project. Consultant should review the listed tasks in detail and are encouraged to add additional tasks and propose enhancements, or procedural/technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

Design Standards

1. Roadway design shall be in accordance with the American Association of State Highway Transportation Officials' (AASHTO) *A Policy on Geometric Design of Highways and Streets*, latest edition; City Standard Drawings, and City Master Plan of Streets, City Circulation Element; and City standard practices.
2. Bridge design shall be in accordance with Caltrans' Bridge Design Specifications Manual and other Caltrans bridge design standards.
3. Specifications shall be in accordance with the City standard bid documents and the American Public Works Association "Greenbook" (Standard Specifications for American Public Works Construction) and Caltrans standard specifications for bridge construction only; all latest editions.
4. All dimensions shall be in English Unit.

Task 1 – Project Management (All Phases)

Coordination and Meetings

The Consultant's Project Manager will take the lead in the coordination of all project activities, including coordination with other agencies, deliverables submissions, permits, and similar coordination efforts consistent with the scope of work.

- The Consultant shall conduct a project kick-off meeting with the City staff. The Consultant will present the Work Plan, introduce the project team, request information, and conduct other similar activities. The Consultant shall prepare and distribute kick-off meeting minutes.

- The Consultant shall schedule, attend, and conduct monthly Project Development Team (PDT) meetings throughout the Phase I and Phase II work. The Consultant shall prepare and distribute PDT meeting minutes to all PDT members.
- The Consultant shall attend other meetings as required (e.g., CVWD coordination, utility company, other agencies) to perform coordination and to execute the scope of work.

Quality Assurance and Quality Control

The Consultant will have a Quality Assurance and Quality Control Plan in effect for the duration of the scope of services. The plan will establish a process whereby all deliverables are checked prior to any formal submission and all job-related correspondence and memoranda are appropriately filed. An appointed Quality Assurance Officer will monitor and review project activities and deliverable schedules.

Project Schedule

The Consultant will prepare and periodically update a project schedule with tasks and milestones represented in Microsoft Project format. The Consultant will break down the schedule by logical tasks consistent with the scope of work and with enough detail to track project progress. Both a baseline schedule and tracking updates are required. The schedule must reflect realistic estimates of review periods by other agencies for tasks, such as reports, plans, permits, and coordination.

Administration

- The Consultant will establish and apply internal accounting methods and procedures acceptable to the City for documenting and monitoring contract costs. The Consultant will submit a consolidated monthly invoice in a format acceptable to the City broken down in a manner consistent with the Work Plan (see below). The Consultant shall include with the monthly invoice a progress report that reflects the work completed within the invoice period.
- The Consultant will provide the City with copies of written correspondence between the Consultant and third parties pertaining specifically to the Project.
- The Consultant will maintain project files in accordance with its Work Plan.
- The Consultant shall also prepare the following Caltrans forms and documents:

Deliverables:

The Consultant shall deliver the following:

- *Baseline project schedule and monthly schedule updates shall be in Microsoft Project 2013 (or more recent) (electronic PDF and hardcopy formats)*
- *Meeting Agendas and Minutes (electronic PDF and hardcopy formats).*
- *Quality Assurance and Quality Control Plan (electronic PDF and hardcopy formats)*
- *Monthly invoices and progress reports, copies of written correspondence (electronic or hardcopy format).*

Task 2 – Preliminary Engineering

Surveys and Base Mapping

The Consultant shall perform design surveys to conform to the Caltrans Surveys Manual. The Consultant shall perform design survey for the Avenue 50 bridge at Coachella Valley Storm Channel to the current Caltrans-required accuracy for contours to perform the design, establish the limits of the new ROW, and locate all existing utilities and the future location of the relocated utilities. The Consultant shall confirm required survey accuracy with Caltrans.

The Consultant shall provide base mapping suitable for design of the Project in the U.S. customary (English) unit and in digital format. Horizontal datum will be NAD 1983-1992, and vertical datum will be NAVD 1988. The Consultant shall be responsible to verify datum with Caltrans and the City. Surveys are to be in the U.S. customary (English) unit. The horizontal and vertical control shall be English.

Preliminary Engineering

The Consultant shall develop various viable alternatives and perform alignment studies to support the Engineer's Report and the ED preparation, including development of horizontal and vertical geometry, typical section, and cost. To support the engineering effort, the Consultant will study geology, advance structures, utilities, drainage, traffic capacity, traffic operations, traffic management, and all of the tasks listed below.

Research of Record Information

The Consultant shall perform all research of agency records, as necessary, to secure the information, clearances, and/or plan review services required to identify, locate, and accurately lay out all of the underground improvements and easements, centerline, ROW, and private property lines.

The Consultant shall perform all research of private development plans adjacent to or affecting the Project site, as necessary, to secure the information, clearances, and/or plan review services required to identify, locate, and accurately lay out all of the underground improvements and easements, centerline, ROW, and private property lines.

The City will provide copies of available pertinent City records, such as survey ties, benchmarks, and street plans, which the City knowingly has in its possession.

Develop Alternatives, Cost Estimates, and Schedules

The Consultant shall develop various alternatives that will satisfy project goals, be cost effective, and avoid or minimize environmental and ROW effects. The alternatives need to be estimated, and a schedule needs to be prepared. The estimates, although preliminary, need to be factual.

Value Analysis (VA) is the preferred method of developing alternatives. VA is the systematic application of recognized analytical techniques to identify the function of a project, identify alternatives, and analyze the alternatives to identify the one that fully meets the function of the Project at the lowest overall cost.

The Consultant will be required to participate in a VA study if the estimated project cost exceeds the \$25 million threshold limit, and it is recommended at this stage.

The development of cost estimates requires consideration of the impacts of each alternative. The following areas should be examined for impacts and associated mitigating costs.

Deliverables:

The Consultant shall deliver the following:

- *Surveys Aerial Base Mapping*
- *Alternative Alignment Studies*
- *Rough Order of Magnitude Estimates*

Task 3 – Engineer's Report (ER)

The Consultant shall prepare an Engineer's Report similar to Caltrans Project Report format, as shown in Caltrans' Project Development Procedures Manual, Chapter 12 and Appendix K.

The ER will include existing and forecasted traffic, design volumes, and accident data; current cost estimate; Exceptions to AASHTO Design Features.

The Consultant shall prepare the required engineering studies to support the ER and the ED preparation, including development of horizontal and vertical geometry, typical section, and cost. To support the engineering effort, the Consultant will study geology, advance structures, utilities, drainage, traffic capacity, traffic operations, and traffic management.

The Consultant shall prepare the right of way requirements map and data sheet with rough order of magnitude estimate.

As part of the ER development, the Consultant shall prepare a (preliminary geometric plans and profiles. The Consultant shall identify potential geometric issues, nonstandard features, proposed bridge profiles, preliminary ROW requirements, and any other constraints.

Alternatives

- **Viable Alternatives**

The Consultant shall study various project alternatives, including variations that will satisfy project goals, be cost effective, and will avoid or minimize environmental and ROW impacts. The geometric designs shall support development of the Engineer's Report and Environmental Document. The design must be consistent with the City's General Plan document, and any other Specific Plan requirements in the project area. The "no-build" alternative shall be discussed in the ER.

The engineering features of the alternative should include the following:

- Typical sections
- Horizontal and vertical alignment
- Summary – ROW widths
- Structural section requirements
- Drainage structures
- Nonmotorized and pedestrian features
- Any other appropriate information

Structures – Advance Planning Studies

The Consultant shall conduct a bridge evaluation to assess various structure alternatives for the bridge design and construction requirements of the proposed bridge, adhering to Caltrans Bridge Design Specification Manual and Other Design Standards. The Consultant shall prepare Advance Planning Studies and cost estimates for the various structure alternatives. The new design shall be staged so as not to reduce the number of lanes on Avenue 50 during construction.

All of the alternatives shall provide the required minimum vertical clearance. The advance planning studies must show sufficient detail so that consideration for environmental, permit, and traffic requirements can be cost estimated.

Existing Utilities Research

- a. The Consultant shall conduct existing utility research for all utilities within the Project limits to identify, locate, and accurately lay out all of the underground improvements.
- b. The Consultant shall provide preliminary notification letters to the utilities and request current information. The Consultant shall provide additional notification letters to the utilities and/or call the utilities, as necessary, until a written response is received from the utility. The Consultant is responsible to complete and mail the document, and to provide the City with a copy. The Consultant shall measure the height of the existing overhead utility lines for traffic signal, safety lighting, and street light clearance.

Value Analysis

A Value Analysis (VA) study will be required for this project per Caltrans and FHWA guidelines. CONSULTANT will follow VA procedures, identify the VA team, conduct the analysis, and prepare the draft and final VA report. CONSULTANT will also provide the services of the Project Manager, one Senior Specialist, and one Project Engineer to participate in the VA team meetings. CONSULTANT staff will attend the Pre-Study Meeting, Workshop, and Implementation Meeting. CONSULTANT will also provide copies of project information and data that will be available at the time the VA study will be conducted.

Preferred Alternative

Identify the Preferred Alternative and describe any changes resulting from the comments received from circulation of the ED and the public hearing process, including proposed changes in the project design or any mitigating features. Describe the engineering, environmental, and planning rationale for selection of the Preferred Alternative.

Deliverables:

The Consultant shall deliver the following:

- *Refined Alternative Alignment Studies [Three (3) hardcopies and electronic PDF file]*
- *Preferred Alternative Alignment Study [Three (3) hardcopies and electronic PDF & CADD files]*
- *Refined Rough Order of Magnitude Estimates[Three (3) hardcopies and electronic PDF file]*
- *Right of Way Requirements Map[Three (3) hardcopies and electronic PDF & CADD files]*
- *Structures – Advance Planning Studies [Three (3) hardcopies and electronic PDF & CADD files]*
- *Utilities Research Data and Base Map [Three (3) hardcopies and electronic PDF & CADD files]*
- *Value Analysis Report [Three (3) hardcopies and electronic PDF file]*
- *Final Engineer's Report [Three (3) hardcopies and electronic PDF file]*

Task 4 – Environmental Documentation

The Consultant shall prepare and submit a NEPA/CEQA questionnaire. Caltrans will make the final NEPA and CEQA determinations. The Consultant shall prepare environmental documentation in accordance with Caltrans and federal guidelines and procedures. The Consultant shall prepare the Purpose and Need and other required documents.

The Consultant will prepare the necessary technical studies and ED pursuant to CEQA, NEPA, and related requirements for the proposed Project, to address, as appropriate, traffic, noise impacts, air quality, lighting, wetlands, floodplains, wildlife and plants, historic and cultural resources, social and economic changes, parklands and recreational areas, hazardous waste, aerially deposited lead, water quality, energy, and visual effects. Once the appropriate level of ED has been identified (Negative Declaration [ND]/Finding of No Significant Impact [FONSI] or Initial Study [IS]/Environmental Assessment [EA]), the ED and supporting technical studies will be submitted to the City, Caltrans, and FHWA, as appropriate, for review and approval. In addition to preparing the environmental documentation, the Consultant will also be responsible for CEQA and NEPA public involvement processes.

The Consultant shall identify likely permits and shall assist Caltrans and the City in coordinating with permitting agencies.

Environmental studies will be prepared to meet CEQA, NEPA, and related requirements, and in accordance with the City, Caltrans, and FHWA guidelines. The Consultant will coordinate with the City and Caltrans in determining the specific content and format requirements for the reports. The Consultant shall prepare as appropriate, but not limited to, the following environmental studies:

- Cultural Resources (Archaeological Survey Report [ASR], Historic Resources Evaluation Report [HRER], Historic Property Survey Report [HPSR])
- Air Quality Report
- Traffic Analysis Study/Circulation Bikes and Pedestrian
- Hazardous Materials/Waste Initial Site Assessment (ISA)
- Traffic Noise Report
- Biological Resources and Wetlands
- Community Impacts Analysis
- Relocation Impact Document
- Floodplain Evaluation
- Water Quality Assessment
- Land Use Analysis
- Visual Impact Assessment

Public Information Meetings

The Consultant will assist the City and Caltrans in conducting Public Information Meetings to obtain public input. Records of public meetings will be prepared and submitted to the City and Caltrans. In addition, attendance at up to three (3) public meetings (i.e., Traffic and Transportation Commission, Planning Commission, and City Council) and preparation for these meetings should also be budgeted to solicit public input.

Preparation of Draft ED

The appropriate ED (ND/FONSI or IS/EA) will be prepared in accordance with the City Environmental Guidelines, Caltrans Environmental Handbook, and FHWA. Concurrent with the previously discussed technical analyses, the Consultant will prepare the appropriate Draft ED incorporating an environmental checklist, technical analyses, a discussion of critical environmental issues identified, an analysis of the cumulative and indirect effects of the Project, mitigation measures, and a list of potential permits required.

Prepare Response to Comments

The Consultant will address comments received from agencies and the public during the ED circulation period and the public hearing. The responses will be submitted to the City and Caltrans for review.

Final ED

The Consultant will prepare an Administrative Final ED, which will be submitted to the City and Caltrans for review. The Consultant will revise the Administrative Final ED, which will be submitted to the City, Caltrans, and FHWA for approval and signature. Following review by the City, Caltrans, and FHWA, the consultant shall revise the Administrative Final ED and submit the Final ED for approval. The Consultant will prepare a Mitigation Monitoring Plan in a matrix format to accompany the Final ED. The matrix will include a description of each mitigation measure, organized by topic, numbered to correspond with the impacts, and referenced back to the ED. For each mitigation measure, the reporting process, timing of measure, responsible party, and verification of compliance will be identified.

Deliverables:

The Consultant shall deliver the following:

- *All required Environmental Technical Studies [Three (3) hardcopies and electronic PDF file]*
- *Final Environmental Document [Three (3) hardcopies and electronic PDF file]*

Task 5 – Plans, Specifications and Estimates (Optional Services)

Upon satisfactory completion of the planning phase, the Consultant may be retained to perform the Design Phase, consisting of final design, ROW engineering, utility coordination, design surveys, PS&E, permitting, agency coordination, bid support, and services during construction.

Consultant shall not include in their proposals any detailed scope and cost proposal of these services until further written request by the City. The final design may take place concurrently with the environmental technical studies once the traffic analysis has progressed sufficiently to support final design decisions.

Task 6 – Construction Management Services (Optional Services)

Upon successful completion of PS&E phase. The City may engage the Consultant to provide construction management services to administer the construction construct and prepare as-built package.

Consultant shall not include in their proposals any detailed scope and cost proposal of these services until further written request by the City.