



City Council Staff Report

Date: November 3, 2010

CONSENT CALENDAR

Subject: APPROVAL OF AN ENCROACHMENT LICENSE TO ROYAL STREET COMMUNICATIONS CALIFORNIA, LLC, FOR A PRIVATE ELECTRICAL LINE IN CERRITOS ROAD

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Approval of this item will authorize the issuance of an Encroachment License to Royal Street Communications California, LLC, for operation and maintenance of a private electric and communication line located across Cerritos Road north of Vista Chino.

RECOMMENDATION:

- 1) Approve Agreement No. _____, an Encroachment License between the City of Palm Springs and Royal Street Communications California, LLC, a Delaware limited liability company, for operation and maintenance of a private electric and communication line located across Cerritos Road north of Vista Chino; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

Chapter 14.16 of the Palm Springs Municipal Code requires an encroachment permit to be issued for any improvements constructed in the public right-of-way. Additionally, whenever utility facilities or other improvements of a type of use determined by the Director of Public Works to require additional liability protection for the City, a formal agreement through an Encroachment License is required.

On October 7, 2009, the City Council approved Conditional Use Permit Case No. 5.1226 and Variance Case 6.513 (Installation of a Fifty-Five Foot High Commercial Communications Antenna by Royal Street Communications California, LLC). Conditions imposed by the City Council required the applicant to obtain an Encroachment License for private utilities extending across public right-of-way to the new cell tower. The proposed Encroachment License satisfies that requirement.

ITEM NO. 2.P.

The applicant (Royal Street Communications, LLC) requires a privately owned electrical and communication line to be installed from an existing fiber optic pull box at the northwest corner of Vista Chino and Cerritos Road to a new cell tower within an existing cell tower site located on the southeast corner of Sahara Road and Cerritos Road. The conduit route will extend from the northwest corner of Vista Chino and Cerritos Road, cross Cerritos Road to the east and extend north behind the easterly curb to the existing cell tower facility at 2101 Sahara Road.

The utilities will be installed at an appropriate depth with a marker tape above it to further protect and identify the privately owned utility. Conditions of the Encroachment License require the applicant to join and maintain membership with Underground Service Alert of Southern California (USA/Dig Alert), imposing requirements on the applicant to maintain its private utility, and to identify and mark its location within the right-of-way when construction or excavation may occur within the street.

Staff recommends approval of the encroachment license with Royal Street Communications California, LLC, which has been reviewed and approved by the City Attorney.

FISCAL IMPACT:

None.

SUBMITTED:

Prepared by:

Recommended by:

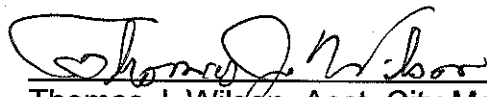


Marcus L. Fuller
Assistant Director of Public Works

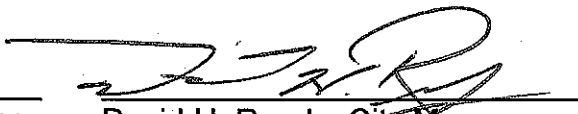


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Encroachment License

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS
P.O. Box 2743
Palm Springs, California 92263-2743
Attn: City Clerk and Public Works and Engineering

Filing Fee Exempt Per Government Code 6103
EL 10-02

(For Recorder's Use Only)

ENCROACHMENT LICENSE AGREEMENT

THIS ENCROACHMENT LICENSE (the "License") is entered into this 15th day of September, 2010, by and between **Royal Street Communications California, LLC, a Delaware Limited Liability Company** ("Licensee") and the **CITY OF PALM SPRINGS**, a California charter city ("City").

RECITALS:

A. **Royal Street Communications California, LLC, a Delaware Limited Liability Company**, is the Lessee of that certain real property located in the City of Palm Springs, County of Riverside, State of California, identified by Assessor's Parcel Number (APN) 501-351-001, by that certain Communications Site Lease Agreement, dated September 1, 2009, attached hereto as **Exhibit "A"** and incorporated herein by reference ("Licensee Property").

B. City is the owner of certain fee and/or easement interests in that certain real property located in the City of Palm Springs, County of Riverside, State of California adjacent to the Applicant Property and more particularly described and shown on **Exhibit "B"** ("City Property").

C. Licensee desires to construct and maintain **TWO 3-inch (I.D.) diameter X Approx. 200 lineal feet electrical conduit, and ONE 2-inch (I.D.) X Approx. 200 lineal feet location wiring**, hereinafter referred to as the "Encroachment", which will encroach on the City property in the location described and shown on **Exhibit "C"**, attached hereto and incorporated herein by reference (the "Encroachment Area").

D. City has agreed to grant to Licensee an encroachment permit ("Permit") for the Encroachment in accordance with Chapter 14.16 of the City of Palm Springs Municipal Code on the condition that Licensee executes this License.

NOW THEREFORE, the parties hereto agree as follows:

1.0 License. The City hereby grants a License to Licensee to construct the Encroachment within the Encroachment Area upon all of the terms and conditions of the Permit and this License.

2.0 Commencement of Construction. Licensee shall commence the construction of the Encroachment within a reasonable amount of time, in no event to exceed ninety (90) days following the execution date of this License. Before beginning any physical work on the Encroachment, Licensee shall notify City that construction of Encroachment will be commenced, at least twenty-four (24) hours prior to commencement of such work. Licensee shall also notify the City upon completion of the Encroachment. It shall be the Licensee's responsibility to obtain the required permits/easements from the California Department of Transportation (CalTrans) for the portion of Encroachment within Vista Chino (Hwy 111) prior to commencing construction.

3.0 Construction of Encroachment. Encroachment within City right-of-way will be consistent with Trench Detail shown on Exhibit "C" (2 pages). Any structure placed pursuant to this License shall be constructed in a careful and workmanlike manner and in accordance with plans and specifications to be submitted to and approved by the City of Palm Springs Department of Public Works and Engineering Department of Building and Safety, before Licensee commences construction of Encroachment within the Encroachment Area, or commences construction of any work on Licensee Property.

4.0 Maintenance. Licensee shall have the right and obligation to maintain, repair and replace, at its own cost and expense, the Encroachment so as to keep the Encroachment Area in a neat, clean, first class condition and in good order and repair, free of trash and debris at all times. As the Encroachment Area consists of public street rights-of-way, the Licensee shall ensure that any excavations, trenches, and backfill and repaving of trenches excavated by Licensee for the Encroachment are maintained as required by the City, in accordance with applicable City standards or as directed by the City Engineer. Licensee hereby agrees to perform such additional repairs and/or maintenance work in the Encroachment Area within fifteen (15) days notice from City. Licensee shall have access across the City Property at all times while the License is in effect solely for the purposes as noted in Section 3. In the event that Licensee does not maintain the Encroachment as required herein, the City will have the option to either (i) terminate the License as more particularly provided in Section 7 or, (ii) after giving Licensee reasonable notice, to make such repairs or perform such maintenance as is required. If City performs the required repairs and/or maintenance, City shall submit an invoice to Licensee for payment of the repairs and/or maintenance work performed by City, including administrative fees, and Licensee shall pay such invoice received within thirty (30) days for such work performed. Failure to pay any invoice submitted to Licensee by City within thirty (30) days notice from City shall automatically terminate the License herein granted.

4.1 Construction by Others within Encroachment Area. Licensee hereby acknowledges that the License herein granted by City is non-exclusive, and that City may grant subsequent encroachments within the Encroachment Area to other parties, including public utility companies, other governmental agencies, and private parties. Licensee hereby agrees to join and maintain membership with Underground Service Alert of Southern California (Dig Alert) for the entire term of this License, or until the Encroachment is removed, whichever occurs first. Licensee shall be required, pursuant to this provision of the License granted by City, to monitor notifications from USA/Dig Alert (1-800-227-2600) of excavations or other work within the Encroachment Area by public agencies or private parties that may directly affect Licensee's Encroachment. It shall be the Licensee's sole responsibility to adequately mark, identify, and locate its Encroachment within the Encroachment Area for any and all public agencies or private parties who have duly notified USA/Dig Alert of excavations or other work within the Encroachment Area. Failure of Licensee to timely and/or correctly mark, identify, and locate its Encroachment within the Encroachment Area shall be the liability of the Licensee. Licensee shall indemnify, hold harmless, and release City from all damages of any kind, due to damages incurred to its Encroachment within the Encroachment Area, including complete loss of the use and/or value of the Encroachment due to excavations or other work within the Encroachment Area by public utility companies, other governmental agencies, and private parties, including the City, who have duly notified USA/Dig Alert of their intention to excavate or perform other work within the Encroachment Area. Licensee acknowledges that this provision of the License granted by City releases City of any financial or other obligations to maintain the Encroachment within the Encroachment Area, and that Licensee shall be solely responsible for ensuring that its Encroachment is adequately protected for the entire term of this License.

Licensee further acknowledges its Encroachment consists of a privately owned, underground, power conduit, and its responsibility to ensure the Encroachment is identified and appropriately marked within the Encroachment Area to ensure future work within the Encroachment area does not result in injury or loss of life. Licensee hereby indemnifies the City from any and all liability, in accordance with Section 6 of this License, for any injuries or loss of life resulting from Licensee's failure to comply with the requirements of maintaining the Encroachment and ensuring its identification within the Encroachment Area through membership in USA/Dig Alert.

4.2 Relocation of Encroachment within City Right-of-Way. In the event of a conflict with an underground utility proposed by any public agency or private party whose proposed utility is approved for installation by City within the Encroachment Area, Licensee hereby agrees to relocate the Encroachment, at Licensee's sole expense, as necessary to remove any such conflict with an underground utility proposed by any public agency or private party. Licensee shall prepare relocation plans for the Encroachment and submit to the City Engineer, as well as the affected

public agency or private party, for review and comment within thirty (30) days notice from City of the underground utility conflict. Licensee shall relocate the Encroachment, as directed by the City, pursuant to Sections 2, 3, and 5 of this License, except, however, that relocation of the Encroachment, as approved by City, shall commence no later than thirty (30) days approval of relocation plans for the Encroachment by City.

5.0 Installation and Maintenance of Safety Precautions. Licensee shall, in connection with the construction and maintenance of the Encroachment, provide, install, and maintain such lights, barriers, warning signs or other safety precautions as are reasonably necessary to protect anyone utilizing the City Property for whatever reason. In the event that the City determines that suitable safety precautions are not being provided by Licensee, the City may, after two (2) days notice from City to Licensee, provide, install and maintain such safety precautions. If the City provides the safety precautions pursuant to this Section 5, City shall submit an invoice to Licensee for payment of the safety precautions installed by City, including administrative fees, and Licensee shall pay such invoice received within thirty (30) days for such work performed. Failure to pay any invoice submitted to Licensee by City within thirty (30) days shall automatically terminate the License herein granted.

6.0 Indemnity. Licensee hereby agrees to indemnify and defend the City, its officers, agents and employees against and to hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the location, construction, maintenance, relocation or removal of the Encroachment, 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 City, and in connection therewith:

(a) Licensee 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) Licensee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and Licensee agrees to save and hold the City, its officers, agents and employees harmless there from;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Licensee for such damages or other claims arising out of the location, construction, maintenance, relocation or removal of the Encroachment, Licensee agrees to pay 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.

7.0 Covenants Running With the Land. The covenants and restrictions by Licensee set forth in this License: (a) are made for the direct benefit of the City Property; (b) will constitute covenants running with the land and equitable servitudes; (c) will bind Licensee and every person having any fee, leasehold or other interest in any portion of the Licensee Property at any time or from time to time; and (d) will inure to the benefit of the City and every person having any fee, leasehold or other interest in the City Property at any time or from time to time.

8.0 Insurance. Licensee shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this License, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Licensee's use of the Encroachment within the Encroachment Area under this License. Insurance shall be kept in full force and effect during the term of this License, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insured by original endorsement shall be delivered to and approved by City prior to City's approval of this License. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Licensee's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

8.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

Comprehensive general liability and personal injury with limits of at least One Million Dollars (\$1,000,000) combined single limit coverage per occurrence.

For any claims related to this License, Licensee's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Licensee's insurance and shall not contribute with it.

8.2 Sufficiency of Insurers. Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VIII, or better, unless otherwise acceptable to the City.

8.3 Verification of Coverage. Licensee shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, affecting all of the coverages required by this License. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage

on its behalf. All proof of insurance is to be received and approved by the City before approval of this License. City reserves the right to require Licensee's insurers to provide complete, certified copies of all required insurance policies at any time.

Verification of Insurance Coverage may be provided by: (1) an approved General Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. "The City of Palm Springs, its officials, employees and agents are named as an additional insured" ("as respects Encroachment License No. 07-03" may be included in this statement).
2. "This insurance is primary and non-contributory over any insurance or self-insurance the City may have" ("as respects Encroachment License No. 07-03" may be included in this statement).
3. "Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out. **See example below.**

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policy.

All certificates and endorsements are to be received and approved by the City before this License is approved.

Cancellation Example:

SHOULD ANY OF THE ABOVE REFERENCED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS* WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

**The broker/agent can include a qualifier stating "10 days notice for nonpayment of premium."*

8.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Licensee shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

8.5 Severability of Interests (Separation of Insured). This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

8.6 Insurance Increase. Not more frequently than one (1) time every three (3) years, if, in the opinion of the City, the amount of public liability and property damage insurance coverage at that time is not adequate, the City may require modifications to the required insurance coverage in this Section 8. City shall notify Licensee, and Licensee hereby agrees to provide City with certificates and endorsements evidencing City's required increased insurance coverage amounts within thirty (30) notice from City. Failure of Licensee to provide City with certificates and endorsements evidencing City's required increased insurance coverage amounts within thirty (30) days shall automatically terminate the License herein granted.

9.0 Termination. The License is terminable with or without cause by City at any time. Licensee shall remove the Encroachment and restore the Encroachment Area on the City Property to its former condition, at Licensee's sole cost and expense, within thirty (30) days notice from City. In the event Licensee fails to remove the Encroachment and restore the Encroachment Area on the City Property within thirty (30) days notice from City, City shall have the right to do so without notice to Licensee. Licensee shall immediately reimburse the City for all expenses incurred by City in the removal of the Encroachment and restoration of the Encroachment Area on the City Property. Said amounts shall accrue interest from the date the expenses were incurred by City at the maximum non-usurious interest rate permitted by law.

10.0 Notices. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to be given under the provisions of this License shall be in writing and either served personally or sent prepaid, first-class mail to the following address:

To City: City of Palm Springs
 PO Box 2743
 Palm Springs, CA 92263-2743
 Attn: Public Works and Engineering Department

With Copy to: City Attorney, City of Palm Springs
PO Box 2743
Palm Springs, CA 92263-2743
Attn: Douglas Holland

Licensee: Royal Street Communications California, LLC
2913 El Camino Real #561
Tustin, CA 92782
Attn: Jeff Clarke

Either party may change its address from time to time 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 pursuant to this Section 10.

11.0 Attorneys Fees. In any action between the parties hereto seeking enforcement of this License, or in connection with the License or the Permit, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs.

12.0 Successors and Assigns. All rights and obligations created by this License shall be appurtenant to and shall run with the Licensee Property and the City Property and each part thereof and interest thereon, and shall be binding upon the owners of the Licensee Property and its respective successors and assigns acquiring any right, title and interest in the Licensee Property.

13.0 Amendment or Modification. This License may not be modified or amended except by written agreement executed by the then-owner of the Licensee Property and the City Property and recorded in the Office of the County Recorder, County of Riverside, California.

14.0 Governing Law. This License shall be governed by and construed in accordance with the laws of the State of California.

15.0 Severability. The invalidity or unenforceability of any provision of this License with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof or the same provision when applied to another party or to a different set of circumstances.

16.0 Recordation. This License shall be recorded in the Office of the County Recorder, Riverside County, California, and it shall serve as notice to all parties succeeding to

the interest of Licensee or City that their use of the Licensee Property and the City Property shall be benefited and/or restricted in the manner herein described.

17.0 Counterparts. This License may be executed in any number of counter parts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

"LICENSEE"

Royal Street Communications California, LLC

By: Christine Bryden

Print Name: Christine Bryden
Network Development Manager

ITS: 9/15/10
LICENSEE TITLE

(Licensee shall have signature notarized)

ATTEST:

CITY OF PALM SPRINGS,
a California charter city

By: _____
James Thompson, City Clerk

By: _____
David H. Ready, City Manager

APPROVED AS TO FORM:

APPROVED BY CITY COUNCIL:

Date: _____

Douglas Holland, City Attorney

Agreement No.: _____

STATE OF CALIFORNIA

COUNTY OF ORANGE

On September 15, 2010, before me, Robin Hickman, Notary Public, personally appeared Christine Bryden, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

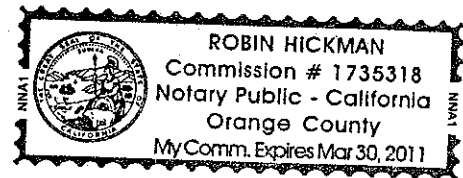
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Robin Hickman
Notary Public

My commission expires: 3/30/2011

(SEAL)



STATE OF CALIFORNIA }
COUNTY OF _____ } SS

On _____, before me, _____, Notary Public,
DATE

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.

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

WITNESS my hand and official seal.

Signature of Notary

STATE OF CALIFORNIA }
COUNTY OF _____ } SS

On _____, before me, _____, Notary Public,
DATE

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.

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

WITNESS my hand and official seal.

Signature of Notary

EXHIBIT "A"

DESCRIPTION OF LICENSEE PROPERTY

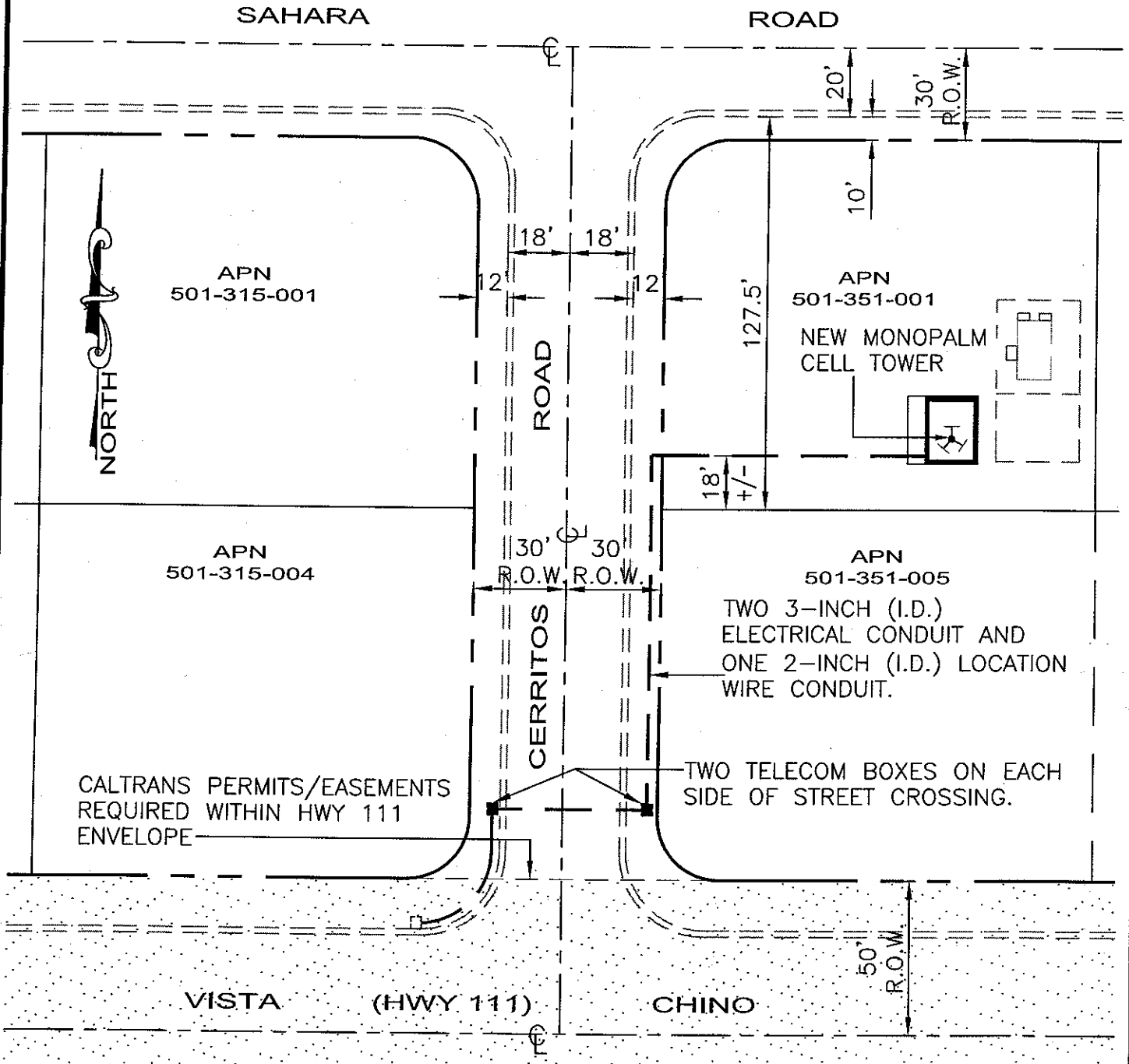
LOT 83 OF DESERT PARK ESTATES NO. 2, AS SHOWN BY MAP ON FILE IN BOOK 28, PAGE 99,
IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY.

EXHIBIT "B"

DEPICTION OF CITY PROPERTY AND ENCROACHMENT

A PORTION OF CERRITOS ROAD, BETWEEN VISTA CHINO AND SAHARA ROAD, SHOWN AS LOT B (60 FEET WIDE RIGHT-OF-WAY), IN DESERT PARK ESTATES NO. 2, SHOWN BY MAP ON FILE IN BOOK 28, PAGE 99, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, AND FOUND WITHIN THE SOUTHEAST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 4 EAST, S.B.M., IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

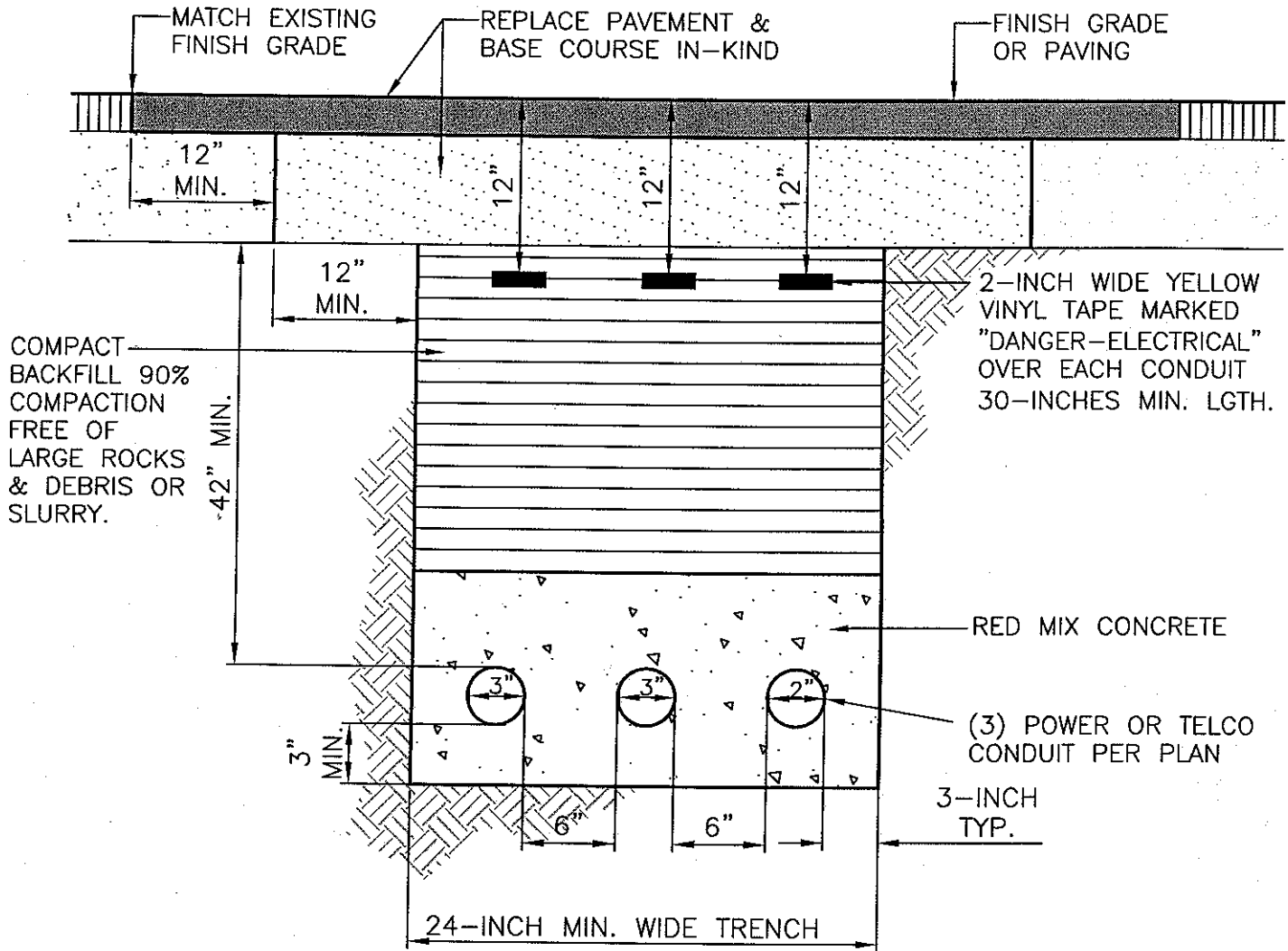
EXHIBIT "C"



DEPICTION OF CITY PROPERTY AND CALTRANS ENCROACHMENT INCLUSIVE OF PERMIT CONDITIONS

RIGHT-OF-WAY ENCROACHMENT EXHIBIT PORTION OF SE 1/4, SW 1/4, Section 1, T4S, R4E	DESIGN BY: FUP	SCALE: NTS	FILE NO. EL 10-02
	CHECKED BY:	DATE 10/13/10	SHEET NO.: 1 OF 2

EXHIBIT "C"



TRENCH DETAIL

NOTE: CONTRACTOR MAY USE DIRECTIONAL BORING AS AN ALTERNATIVE IN WHICH ALL NOTES TO BACKFILLING AND WARNING TAPE WILL NOT BE APPLICABLE.

RIGHT-OF-WAY ENCROACHMENT EXHIBIT 2101 SAHARA ROAD - Section 1, T4S, R4E	DESIGN BY: FUP	SCALE: NTS	FILE NO. EL 10-02
	CHECKED BY:	DATE 10/13/10	SHEET NO.: 2 OF 2