



# REVISED AGENDA



JOINT MEETING OF THE  
**IMPERIAL BEACH CITY COUNCIL  
REDEVELOPMENT AGENCY  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY**

AND

**DESIGN REVIEW BOARD**

**OCTOBER 8, 2008**

Community Room  
(Behind City Hall)  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932

**WORKSHOP MEETING – 6:00 P.M.**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY, PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

**REGULAR MEETING CALL TO ORDER BY MAYOR**

**ROLL CALL BY CITY CLERK**

**AGENDA CHANGES**

**PUBLIC COMMENT** - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

**REPORTS (1A - 1)**

- 1A. RESOLUTION NO. R-08-162 – APPROVING CHANGE ORDER NO. 3 TO THE OLD PALM AVENUE STREETScape IMPROVEMENT PROJECT (CIP R04-201) AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AGREEMENT WITH FABRICATION ARTS, FOR THE CONSTRUCTION AND INSTALLATION OF SURFBOARD SCULPTURES. (0620-20 & 0720-25)**

City Manager's Recommendation:

1. Receive report;
2. Discuss the elements of the projects listed and provide additional direction to staff if necessary; and
3. Adopt Resolution No. R-08-162 (Attachment 1), which:
  - a. Ratifies Change Order No. 3 (Attachment 2); and
  - b. Authorizes the Executive Director to enter into Agreement with Fabrication Arts (Attachment 3).

**(Continued next Page)**

Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority, or Design Review Board regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

## **REPORTS (Continued)**

### **1. DRAFT PALM AVENUE COMMERCIAL CORRIDOR MASTER PLAN. (0620-90 & 0640-90)** City Manager's Recommendation:

That the Design Review Board:

1. Consider the presentation and provide comments;

That the City Council/Redevelopment Agency:

1. Consider the presentation and provide comments;
2. Direct staff and MIG to proceed to develop a Final Draft Palm Avenue Commercial Corridor Master Plan Study after incorporating public comments from the third community meeting; and
3. Direct staff and MIG to present the Final Palm Avenue Commercial Corridor Master Plan Study to the City Council/Redevelopment Agency in February 2009 or as soon as possible thereafter.

## **ADJOURNMENT**

**The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City's decision-making process.**

**FOR YOUR CONVENIENCE, A COPY OF THE AGENDA AND COUNCIL MEETING PACKET MAY BE VIEWED IN THE OFFICE OF THE CITY CLERK AT CITY HALL OR ON OUR WEBSITE AT**

[www.cityofib.com](http://www.cityofib.com).

Copies of this notice were provided on October 3, 2008 to the City Council, San Diego Union-Tribune, I.B. Eagle & Times, and I.B. Sun.

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO)      ss.  
CITY OF IMPERIAL BEACH)

*AFFIDAVIT OF POSTING*

*I, Lisa Wolfson, Deputy City Clerk of the City of Imperial Beach, hereby certify that the Agenda for the Joint Workshop Meeting as called by the City Council, Redevelopment Agency, Planning Commission, and Public Financing Authority and Design Review Board of Imperial Beach was provided and posted on October 3, 2008. Said meeting to be held at 6:00 p.m. October 8, 2008, in the Community Room (behind City Hall), 825 Imperial Beach Boulevard, Imperial Beach, California. Said notice was posted at the entrance to the City Council Chambers and the Community Room on October 3, 2008 at 10:30 a.m.*

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Lisa Wolfson  
Deputy City Clerk



**STAFF REPORT  
IMPERIAL BEACH REDEVELOPMENT AGENCY**

**TO:** CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY  
**FROM:** GARY BROWN, EXECUTIVE DIRECTOR  
**MEETING DATE:** OCTOBER 8, 2008  
**ORIGINATING DEPT.:** PUBLIC WORKS  
**SUBJECT:** RESOLUTION APPROVING CHANGE ORDER NO. 3 TO THE OLD PALM AVENUE STREETSCAPE IMPROVEMENT PROJECT (CIP R04-201)

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**BACKGROUND:**

On May 28, 2008, the Imperial Beach Redevelopment Agency ("Agency") adopted R-08-149 to award the Old Palm Avenue Streetscape Improvement Project (CIP R04-201) to Portillo Concrete ("Portillo") at a bid price of \$1,196,276.00. This project is funded jointly from RDA Bond (non-housing) (\$1,315,000) and Smart Growth Incentive Program Grant (CALTRANS Grant) (\$1,000,000).

On September 17, 2008, the Agency adopted R-08-159 to approve Change Order 2. Change Order No. 2 authorized the deletion of "fog seal" from the project area and increases the overlay area to 100% of the project area at an additional cost of \$59,500.

The bid price approved on May 2008 included the installation of 18 surfboard sculptures ("sculptures"). The decision to include only 18 sculptures in the initial bid was based on budget constraints. Portillo's bid was well within budget and there were sufficient funds within the project budget to add sculptures to the project. The initial 18 sculptures were to be placed on both sides of the street, but 9 sculptures would have been sited on the north side of Palm between 3<sup>rd</sup> and 2<sup>nd</sup> Streets and 9 sculptures on the south side between Seacoast Drive and 2<sup>nd</sup> Street. Change Order #3 will allow for the addition of 7 more sculptures and will install surfboards along both sides of the Old Palm Avenue between Seacoast Drive to 3<sup>rd</sup> Street.

**DISCUSSION:**

Since the receiving the bid from Portillo, staff has explored the opportunity to increase the amount of sculptures and how to install a representative sample of both large and small designs. The recommendation to increase the number of sculptures and to provide a representative sample of both large and small historic surfboard designs resulted in changes to the specifications of the sculptures. A sculpture prototype was constructed and tested (shaken and climbed upon); the testing revealed that changes needed to be made to the thickness of the pipe and some of the taller sculptures would need bracing. In August staff was contacted by Mr. John Warner, a local surfer who had concerns about the outdoor museum's surfboard designs. Staff met with Mr. Warner and discussed his concerns. Staff agreed with Mr. Warner's concern

that the outdoor museum did not acknowledge the significant role that several local surfboard designers/shapers had in the evolution of surfboard shapes. With Mr. Warner's research and assistance, staff, the consultant team, and Mr. Warner discussed and agreed upon changes to the representative sample of surfboard designs. Mr. Warner's suggestions resulted in the change of five sculptures and deletion of one board. Surfing history can be a contentious and subjective subject, but staff, the consultant team and Mr. Warner all agreed that the alterations made will acknowledge Imperial Beach and the San Diego region's significant contribution to surfing history.

Change Order No. 3 will delete \$96,000 from the Portillo's contract. The Agency proposes to enter into an agreement with Fabrication Arts to construct and install 25 surfboards for an amount not exceed \$207,994. The request for the additional funds will allow the installation of additional boards and permit the installation of a representative sample of both large and small sculptures. The fabrication and installation of the sculptures is eligible for reimbursement by Caltrans Grant.

**ENVIRONMENTAL DETERMINATION:**

An environmental review was conducted on this project and it was determined that this project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15302(c): Replace or Reconstruction of Existing Utility Systems and Facilities.

**FISCAL IMPACT:**

Budget:

Smart Growth Incentive Program Grant	\$1,000,000
RDA Bond (non-housing)	\$1,315,000
<b>Total Project Budget</b>	<b><u>\$2,315,000</u></b>

Expenditure Plan:

	Smart Growth Incentive Program Grant	RDA Bond (non-housing)	Project Total
Design & Environmental Expenditures		\$277,150	\$277,150
Construction Contract	\$768,338	\$427,938	\$1,196,276
Project Management (est.)		\$53,000	\$53,000
Change Order No. 1	\$3,600		\$3,600
Change Order No. 2		\$59,500	\$59,500
Change Order No. 3	(96,000)		(96,000)
Fabrication Arts Contract	\$207,994		\$207,994
<b>TOTAL</b>	<b><u>\$883,932</u></b>	<b><u>\$817,588</u></b>	<b><u>\$1,701,520</u></b>

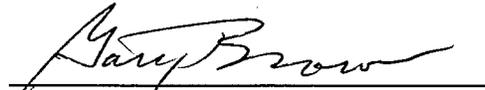
The above information shows that Change Order No. 3 will delete \$96,000 from Portillo's contract and an agreement will be entered into with Fabrication Arts for \$207,994.

**DEPARTMENT RECOMMENDATION:**

1. Receive this report;
2. Discuss the elements of the projects listed and provide additional direction to staff if necessary; and
3. Adopt Resolution No. R-08-162 (Attachment 1), which
  - a. Ratifies Change Order No. 3 (Attachment 2);and
  - b. Authorizes the Executive Director to enter into Agreement with Fabrication Arts (Attachment 3).

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Resolution No. R-08-162
2. Change Order # 3
3. Agreement with Fabrication Arts

**RESOLUTION NO. R-08-162**

**A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY TO APPROVE CHANGE ORDER NO. 3 TO THE OLD PALM AVENUE STREETScape IMPROVEMENT PROJECT (CIP R04-201) AND TO AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO AGREEMENT WITH FABRICATION ARTS, FOR THE CONSTRUCTION AND INSTALLATION OF SURFBOARD SCULPTURES.**

**WHEREAS**, the Imperial Beach Redevelopment Agency (the "Agency") is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area [the "Project"]; and

**WHEREAS**, in order to carry out and implement the Redevelopment Plan, the Agency proposes to pay for the construction of public improvements on Palm Avenue Street from Seacoast Drive to 3<sup>rd</sup> Street; and

**WHEREAS**, the Agency has duly considered all conditions of the proposed payment for improvements and participation and believes that the payment by the Agency of the cost of the installation and construction of the public improvements by the Agency is in the best interest of the City and health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law requirements.

**WHEREAS**, on May 28, 2008, the Redevelopment Agency adopted Resolution No. R-08-149 to award the Old Palm Avenue Streetscape Improvement Project (CIP R04-201) to Portillo Concrete, Inc. ("Portillo") at a bid price of \$1,196,276.00; and

**WHEREAS**, on September 17, 2008, the Redevelopment Agency adopted Resolution No. R-08-159 to approve Change No. 2 to the Old Palm Avenue Streetscape Improvement Project (CIP R04-201);

**WHEREAS**, during construction of the project, it was determined to further modify certain items as contained in Change Order No. 3;

**WHEREAS**, Change Order No. 3 will delete \$96,000 from Portillo's contract;

**WHEREAS**, in order to carry out and implement the Redevelopment Plan, the Agency proposes to entered into an agreement with Fabrication Arts for the Fabrication and Installation of 25 surfboard sculptures;

**WHEREAS**, the Executive Director or designee, is authorized and empowered to execute, for and on behalf of the Agency, an agreement with Fabrication Arts for the Fabrication and Installation of 25 surfboard sculptures for the Old Palm Avenue Revitalization Project, under the terms and conditions set forth in the attachment 3 agreement.

**WHEREAS**, the 25 surfboard sculptures is a reimbursable expenditure under the terms Smart Growth Incentive Grant Program;

**NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency of the City of Imperial Beach as follows:

1. The above recitals are true and correct;

2. That the Agency finds and determines that the construction of public improvements on Palm Avenue Street from Seacoast Drive to 3<sup>rd</sup> Street are of benefit to the Project, that the Agency finds and determines that no other reasonable means for financing the proposed improvements for which the Agency proposes to pay are available to the community, and that the Agency finds and determines that proposed improvements will assist to eliminate blighting conditions inside the Project area;
3. That the Agency finds and determines that the demolition, construction and installation of improvements on Palm Avenue Street from Seacoast Drive to 3<sup>rd</sup> Street are consistent with the Implementation Plan adopted for the Project by the Agency on June 21, 1994, as Document No. 2141, pursuant to California Health and Safety Code section 33490;
4. Change Order #3 is ratified;
5. The Executive Director is authorized to enter into an agreement with Fabrication Arts, Inc. for an amount not to exceed **TWO HUNDRED AND SEVEN THOUSAND NINE HUNDRED AND NINETY-THREE DOLLARS AND TWENTY-TWO CENTS (\$207,993.22)**, and
6. The Executive Director or his designee will seek reimbursement for all eligible expenditures under the terms Smart Growth Incentive Grant Program;

**PASSED, APPROVED, AND ADOPTED** by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 8<sup>th</sup> day of October 2008, by the following roll call vote:

<b>AYES:</b>	<b>BOARDMEMBERS:</b>
<b>NOES:</b>	<b>BOARDMEMBERS:</b>
<b>ABSENT:</b>	<b>BOARDMEMBERS:</b>
<b>DISQUALIFIED:</b>	<b>BOARDMEMBERS:</b>

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**JAMES C. JANNEY**  
**CHAIRPERSON**

**ATTEST:**

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**JACQUELINE M. HALD, CMC**  
**SECRETARY**

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. R-08-162 – A Resolution of the Redevelopment Agency of the City of Imperial Beach, California, APPROVING CHANGE ORDER NO. 3 TO THE OLD PALM AVENUE STREETScape IMPROVEMENT PROJECT (CIP R04-201) AND AUTHORIZE THE EXECUTIVE DIRECTOR TO ENTER INTO AN AGREEMENT WITH FABRICATION ARTS, INC.

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CITY CLERK

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DATE

# PUBLIC WORKS CIP/RDA CHANGE ORDER

SUBMISSION DATE: \_\_\_\_\_

- Contractual Change Order  
Change Order No.: 3
- Purchase Order Change  
Change Order No.: \_\_\_\_\_

Project Name: **Old Palm Ave Streetscape Improvement**  
Project Number: **R04-201**  
Purchase Order No: **Pending**

NAME OF CONTRACTOR: **Portillo Concrete Inc** Contract Amount: **\$ 1,196,276.00**  
Contract Date: June 11, 2008 For: 120 calendar days

You are directed to make the changes noted below in the subject Contract:

By: *Gary Brown*  
Gary Brown City Manager  
Date: 10/1/08

Nature of the Changes: Deduct one Medallion from Line Item 26 Surfboard Medallion.....	(\$ 1,000.00)
Delete Line Item 28 Artist Sculpture Services.....	(\$98,500.00)
Total Deducts .....	(\$99,500.00)
Add Seven (7) Foundations Line Item 27 @ \$500.00.....	\$ 3,500.00
Total Change (Decrease) .....	(\$96,000.00)

These changes result in the following adjustment of Contract Price and Contract Time:

(CIRCLE ONE) Contract Price of Total Prior to This Change Order	\$ <u>1,259,376.00</u>
Net <b>Increase</b> Resulting from This Change Order	\$ _____ [ - - - - ]
<i>If more than one account should be charged, indicate percentages per account.</i>	
Net <b>Decrease</b> Resulting from This Change Order	\$ <u>(96,000.00)</u> [ - - - - ]
Current Contract Price Including This Change Order	\$ <u>1,163,376.00</u>
Contract Time Prior to This Change Order (Days or Date)	<u>122</u>
Net <b>Increase</b> Resulting from this Change Order (Days)	<u>7</u>
Net <b>Decrease</b> Resulting from this Change Order (Days)	<u>0</u>
Current Contract Time Including This Change Order (Days or Date)	<u>129</u>

The Above Changes Are Approved:

LAWRENCE THORNBURGH, P.E. 49795  
Engineer  
By: *[Signature]*  
Date: 9/19/08

**PORTILLO CONCRETE INC**

Contractor  
By: *[Signature]*  
Date: 9/19/08

Requisitioned by: _____	Date: _____
Department Head Approval: _____	Date: _____
Finance Department Approval: _____	Date: _____
Posted/Buyer: _____	Date: _____

**CONTRACT FOR PROFESSIONAL SERVICES  
BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY AND  
FABRICATION ARTS**

THIS agreement (“AGREEMENT”) is made and entered into this \_\_\_\_\_ by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY, a public body, corporate and politic (“AGENCY”), and FABRICATION ARTS, a DBA of Graphics Solutions, LTD (“CONSULTANT”) (collectively “PARTIES”).

**WHEREAS**, the Agency is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area; and

**WHEREAS**, in order to carry out and implement the Redevelopment Plan, the Agency advertised for public bid for the construction of public improvements on Palm Avenue Street from Seacoast Drive to 3<sup>rd</sup> Street [the “Project”]; and

**WHEREAS**, the Agency’s bid document included a stipulated bid item by Fabrication Arts; and

**WHEREAS**, on May 28, 2008, the Agency adopted Resolution No. R-08-149 to award the Project to Portillo Concrete, Inc. (“Portillo”); and

**WHEREAS**, during construction of the project, it was determined that to facilitate the efficient and effective construction of public improvements on the Project it was desirable to change the delivery of the stipulate bid services; and

**WHEREAS**, The AGENCY desires to employ a CONSULTANT to furnish the stipulated bid services (“SERVICES”); and

**WHEREAS**, The AGENCY has determined that CONSULTANT is qualified by experience and ability to perform the services desired by AGENCY, and CONSULTANT is willing to perform such services; and

**WHEREAS**, CONSULTANT will conduct all the work as described and detailed in this AGREEMENT to be provided to the AGENCY.

**NOW, THEREFORE**, the PARTIES hereto mutually covenant and agree with each other as follows:

**1. SERVICES.**

**Scope of Services.** Consultant agrees to fabricate and install 25 surfboard sculptures based on drawings by CWA, Inc. and the subsequent modifications made through 9-04-08. Surfboard sculptures are fabricated from (type 304) stainless steel with an acrylic paint finish; Interpretative

plaques are etched stainless steel (type 316) with a one-color paint fill. The work shall include bolt down installation using four stainless steel j-bolts each and rebar per structural engineering calculations.

Consultant shall, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by Agency, necessary or proper to perform and complete the work and provide the professional services required of Consultant by this Agreement.

Consultant understands that the City of Imperial Beach's Public Works Department has contracted with Portillo Concrete Inc. for the installation of streetscape improvements on Palm Avenue from Seacoast Drive to 3<sup>rd</sup> Street and that Consultant shall coordinate its services hereunder with Portillo Concrete Inc., and Agency and City staff.

**1.1 Project Coordinator.** Larry Martin is hereby designated as the Project Coordinator for Agency and will monitor the progress and execution of this Agreement. Project Coordinator shall have overall responsibility for the progress and execution of this Agreement for Consultant.

**1.2 Modification of Scope of Services.** AGENCY may order changes to the Scope of Services within the general scope of this AGREEMENT consisting of additions, deletions, or other revisions. If such changes cause a change in the CONSULTANT'S cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONSULTANT'S compensation and/or contract time shall be made, subject to the AGENCY'S approval. All such changes shall be authorized in writing, executed by CONSULTANT and AGENCY.

## **2. DURATION OF AGREEMENT**

2.1 The Agreement between Consultant and Agency will be terminated upon acceptance of the work by the Project Coordinator and completed as set forth in **1. Services.**

2.2 Should Consultant begin work on any phase in advance of receiving written authorization to proceed, any professional services performed by Consultant in advance of the said date of authorization shall be considered as having been done at Consultant's own risk and as a volunteer unless said professional services are so authorized.

2.3 Any delay occasioned by causes beyond the control of Consultant may, in the sole discretion of the Agency, merit for the granting of extension of time for the completion of the aforesaid services. When such delay occurs, Consultant shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the professional services when justified by the circumstances in the sole discretion of the Project Coordinator.

**2.4 AGENCY's Right to Terminate for Default.** Should CONSULTANT be in default of any covenant or condition hereof, AGENCY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

**2.5 AGENCY'S Right to Terminate without Cause.** Without limiting its rights in the event of CONSULTANT's default, AGENCY may terminate this AGREEMENT, without cause, by giving written notice to CONSULTANT. Such termination shall be effective upon receipt of the written notice. CONSULTANT shall be compensated for all effort and material expended on behalf of AGENCY under the terms of this AGREEMENT, up to the effective date of termination. All personal property remaining in AGENCY facilities or on AGENCY property thirty (30) days after the expiration or termination of this AGREEMENT shall be, at AGENCY's election, considered the property of AGENCY.

### **3. COMPENSATION.**

3.1 **TOTAL AMOUNT.** The total cost for all work described in **1. SERVICES** shall not exceed **TWO HUNDRED AND SEVEN THOUSAND NINE HUNDRED AND NINETY-THREE DOLLARS AND TWENTY-TWO CENTS (\$207,993.22)** without prior written authorization from Agency.

3.2 The Consultant shall submit, in duplicate, a requisition to the Agency for a down payment of **ONE HUNDRED THREE THOUSAND NINE HUNDRED NINETY-SIX DOLLARS AND SIXTY-ONE CENTS (\$103,996.61)**.

3.3 For subsequent compensation, the Consultant shall submit a requisition to the Agency specifying the amount due for services performed by the Consultant. The Consultant shall be paid based upon the approval of the Project Coordinator.

3.4 Upon approval of the requisition, the Agency shall make payment of approved requisition by approximately the 15th of a given month if the requisition is submitted to the Agency no later than the first of said given month. Payments will be made to the Consultant at the address below.

**4. INDEPENDENT CONTRACTOR.** Consultant and any sub-contractors employed by Consultant shall be independent contractors and not agents of Agency hereunder. Any provision in this Agreement that may appear to give Agency the right to direct Consultant or sub-contractors as to the details of doing the work or to exercise a measure of control over the work means that Consultant shall follow the direction of the Agency as to end results of the work only.

**5. STATEMENT OF EXPERIENCE.** CONSULTANT agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent sculpting

firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. By executing this AGREEMENT, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the AGREEMENT in a manner satisfactory to AGENCY.

## **6. AUDIT OF RECORDS.**

**6.1** At any time during normal business hours and as often as may be deemed necessary the Consultant shall make available to a representative of Agency for examination all of its records with respect to all matters covered by this Agreement and will permit Agency to audit, examine and/or reproduce such records. Consultant will retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

**6.2** The CONSULTANT shall include the AGENCY 's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

**7. CONFIDENTIALITY.** All services performed by CONSULTANT, including but not limited to all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by CONSULTANT, pursuant to this AGREEMENT, are for the sole use of the AGENCY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the AGENCY. This provision does not apply to information that (a) was publicly known, or otherwise known to CONSULTANT, at the time that it was disclosed to CONSULTANT by the AGENCY, (b) subsequently becomes publicly known through no act or omission of CONSULTANT or (c) otherwise becomes known to CONSULTANT other than through disclosure by the AGENCY. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the AGENCY. The sole purpose of this section is to prevent disclosure of AGENCY's confidential and proprietary information by CONSULTANT or subcontractors.

## **8. CONFLICTS OF INTEREST.**

**8.1** CONSULTANT shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the AGENCY in which the CONSULTANT has a financial interest as defined in Government Code § 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the AGENCY.

**8.2** CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act. The CONSULTANT shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the AGENCY's determination that the CONSULTANT is subject to a conflict of interest code. The CONSULTANT shall also file a

Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the CONSULTANT was subject to a conflict of interest code.

8.3 If, in performing the SERVICES set forth in this AGREEMENT, the CONSULTANT makes, or participates in, a “governmental decision” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the AGENCY that would otherwise be performed by a AGENCY employee holding a position specified in the department’s conflict of interest code, the CONSULTANT shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the CONSULTANT’s relevant financial interests.

**9. OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this AGREEMENT shall be considered the property of AGENCY. CONSULTANT shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered “public documents” and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

## **10. INSURANCE**

10.1 CONSULTANT shall 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 work hereunder and the results of that work by the CONSULTANT, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best’s rating of no less than “A” and “VII” unless otherwise approved in writing by the AGENCY’s Risk Manager.

10.2 CONSULTANT’s liabilities, including but not limited to CONSULTANT’s indemnity obligations, under this AGREEMENT, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the AGENCY is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this AGREEMENT.

**10.3 Types and Amounts Required.** CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this AGREEMENT:

**10.3.1 Commercial General Liability (CGL).** Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

**10.3.2 Commercial Automobile Liability.** For all of the CONSULTANT's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$1,000,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

**10.3.3 Workers' Compensation.** For all of the CONSULTANT's employees who are subject to this AGREEMENT and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the AGENCY and its respective elected officials, officers, employees, agents and representatives.

**10.4. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions are the responsibility of the CONSULTANT and must be declared to and approved by the AGENCY. At the option of the AGENCY, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the AGENCY, its officers, officials, employees and volunteers, or (2) the CONSULTANT shall provide a financial guarantee satisfactory to the AGENCY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**10.5. Additional Required Provisions.** The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

10.5.1. The AGENCY, its officers, officials, employees, and representatives shall be named as additional insureds. The AGENCY's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the AGENCY.

10.5.2. The policies are primary and non-contributory to any insurance that may be carried by the AGENCY, as reflected in an endorsement which shall be submitted to the AGENCY.

**10.6. Verification of Coverage.** CONSULTANT shall furnish the AGENCY with original certificates and amendatory endorsements effecting coverage required by this Section 5. All certificates and endorsements are to be received and approved by the AGENCY before work commences. The AGENCY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

**11. INDEMNIFICATION.** To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the AGENCY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate

to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the AGENCY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense AGENCY incurs or makes to or on behalf of an injured employee under the AGENCY 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

## **12. SUBCONTRACTORS.**

12.1 The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the PROJECT is subject to prior approval by the AGENCY.

12.2 All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this PROJECT and for the duration of this AGREEMENT. The CONSULTANT shall require the subcontractor to obtain, all policies described in Section 10.3 of this Agreement in the amounts required by the AGENCY, which shall not be greater than the amounts required of the CONSULTANT.

12.3 In any dispute between the CONSULTANT and its subcontractor, the AGENCY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the AGENCY as described in Section 11 of this Agreement should the AGENCY be made a party to any judicial or administrative proceeding to resolve any such dispute.

**13. NON-DISCRIMINATION.** CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by AGENCY setting forth the provisions of this non-discrimination clause.

**14. NOTICES.** All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to

have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

Gerard E. Selby  
Redevelopment Coordinator  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932

John O'Connell  
Fabrication Arts  
2926 Main Street  
San Diego CA 92113

**15. ASSIGNABILITY.** This AGREEMENT and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated or sub-contracted, without the express written consent of the AGENCY.

**16. RESPONSIBILITY FOR EQUIPMENT.** AGENCY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by AGENCY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless AGENCY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

**17. CALIFORNIA LAW; VENUE.** This AGREEMENT shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this AGREEMENT shall be brought in the county of San Diego, California.

**18. COMPLIANCE WITH LAWS.** The CONSULTANT shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this AGREEMENT. In addition, CONSULTANT shall comply with all applicable prevailing wage provisions of California Labor Code Sections 1770, et seq.

**19. ENTIRE AGREEMENT.** This AGREEMENT sets forth the entire understanding of the PARTIES with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein. No change, alteration, or modification of the terms or conditions of this AGREEMENT, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

**20. NO WAIVER.** No failure of either the AGENCY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this AGREEMENT, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this AGREEMENT shall constitute a waiver of any such breach of such covenant, term or condition.

**21. SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this AGREEMENT shall not render any other provision unenforceable, invalid, or illegal.

**22. DRAFTING AMBIGUITIES.** The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this AGREEMENT, and the decision of whether or not to seek advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each Party. This AGREEMENT shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the AGREEMENT.

**23. CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this AGREEMENT and the Exhibits, the main body of this AGREEMENT shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this AGREEMENT, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this AGREEMENT, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this AGREEMENT.

**24. EXHIBITS INCORPORATED.** All Exhibits referenced in this AGREEMENT are incorporated into the AGREEMENT by this reference.

**25. SIGNING AUTHORITY.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.

(Signatures follow on next page)

Fabrication Arts  
Consultant Agreement  
Old Palm Avenue

**IN WITNESS WHEREOF**, the PARTIES hereto have executed this AGREEMENT the day and year first hereinabove written.

IMPERIAL BEACH REDEVELOPMENT  
AGENCY,  
a public entity

FABRICATION ARTS  
a DBA of Graphics Solutions, LTD

\_\_\_\_\_  
Gary Brown, Executive Director

By: \_\_\_\_\_  
John O'Connell, Vice President

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Gary Brown, Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
James P. Lough, AGENCY Counsel



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
MEMBERS OF THE DESIGN REVIEW BOARD

**FROM:** GARY BROWN, CITY MANAGER

**MEETING DATE:** OCTOBER 8, 2008

**ORIGINATING DEPT.:** GREG WADE, DIRECTOR COMMUNITY DEVELOPMENT *GW*  
ELIZABETH CUMMING, ASSISTANT PROJECT MANAGER

**SUBJECT:** COMBINED CITY COUNCIL/REDEVELOPMENT AGENCY AND  
DESIGN REVIEW BOARD WORKSHOP FOR THE DRAFT  
PALM AVENUE COMMERCIAL CORRIDOR MASTER PLAN

---

**BACKGROUND:**

In April 2006, the City Council discussed the need to review and analyze the General Plan, with specific focus on the City's commercially zoned properties. Staff was directed to proceed with the development of the Palm Avenue Commercial Corridor Master Plan ("Master Plan"). In October 2005, staff submitted an application for a California Department of Transportation ("Caltrans") Community-Based Transportation Planning Grant Program ("the Program"). The Program is a complement to Governor Schwarzenegger's Strategic Growth Plan.

In May 2006, the City of Imperial Beach was notified that Caltrans approved the application for the Master Plan. In May 2007, a Request for Qualifications ("RFQ") was issued for a consultant team for the preparation of a Palm Avenue Commercial Corridor Master Plan. In September 2007, the City entered into Agreement with Moore Iacofano Goltsman, Inc. ("MIG") for preparation of the Master STUDY.

The objective of the Master Plan is to develop and identify specific recommendations for traffic, pedestrian, landscaping and urban design improvements to the corridor and implement elements and parameters as suggested in the Caltrans' publication: "Main Street: Flexibility in Design & Operations". The Draft Master Plan is primarily a Transportation Planning Project that includes methods to achieve traffic calming and pedestrian improvements that will create a more dynamic and revitalized commercial corridor.

To date MIG has completed a mobilization meeting, two staff meetings, and two community workshops. MIG has reviewed, studied and analyzed the information gathered and has incorporated the information in their proposed recommendations for the Palm Avenue Commercial Corridor Master Plan.

**DISCUSSION:**

The purpose of the meeting is to present the draft Master Plan to the City Council/Redevelopment Agency and the Design Review Board for their input. MIG will review the Overall Framework Planning Strategies, Urban Design concepts, and proposed Streetscape and Design recommendations for this important commercial corridor. In making their recommendations, MIG has separated the corridor into four distinct sectors: the "East End Gateway Sector," the "Mid-Town Sector," the "Park Sector," and the "West End Sector." MIG then makes specific design recommendations for each sector which are based, in part, on detailed traffic analysis for each sector. The Comments and recommendations from the City Council/Redevelopment Agency and Design Review Board will be incorporated into the presentation for the Third Community Workshop scheduled for November 13, 2008 where MIG will present a detailed overview of the Draft Master Plan. Public comments from the third workshop will be worked into a final draft that will be reviewed by staff. The draft Final Master Plan will be presented to the City Council for their review and approval in February 2009.

**ENVIRONMENTAL DETERMINATION:**

This corridor master plan study may be exempt from CEQA pursuant to CEQA Guidelines Sections 15262 and 15306. If this Palm Avenue Commercial Corridor Master Plan Study is accepted by the City Council, the Council will then need to direct and authorize the preparation of required environmental documents to support the study as a master plan that may amend the City's general plan/local coastal plan, prompt a coastal development permit, site plan review, and design review for future capital improvements.

**FISCAL IMPACT:**

The City has received a \$150,000 Transportation Planning grant from the California Department of Transportation and \$50,000 was budgeted and available in the Fiscal Year 2007-2008 Capital Improvement Program Budget.

**DEPARTMENT RECOMMENDATION:**

Staff recommends that the Design Review Board:

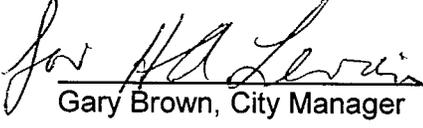
1. Consider the presentation and provide comments;

Staff recommends that the City Council/Redevelopment Agency:

1. Consider the presentation and provide comments;
2. Direct Staff and MIG to proceed to develop a Final Draft Palm Avenue Commercial Corridor Master Plan Study after incorporating public comments from the third community meeting; and
3. Direct Staff and MIG to present the Final Palm Avenue Commercial Corridor Master Plan Study to the City Council/Redevelopment Agency in February 2009 or soon as possible thereafter.

**CITY MANAGER'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gary Brown, City Manager

Attachments:

1. Urban Design Concept Palm Avenue Commercial Corridor Master Study

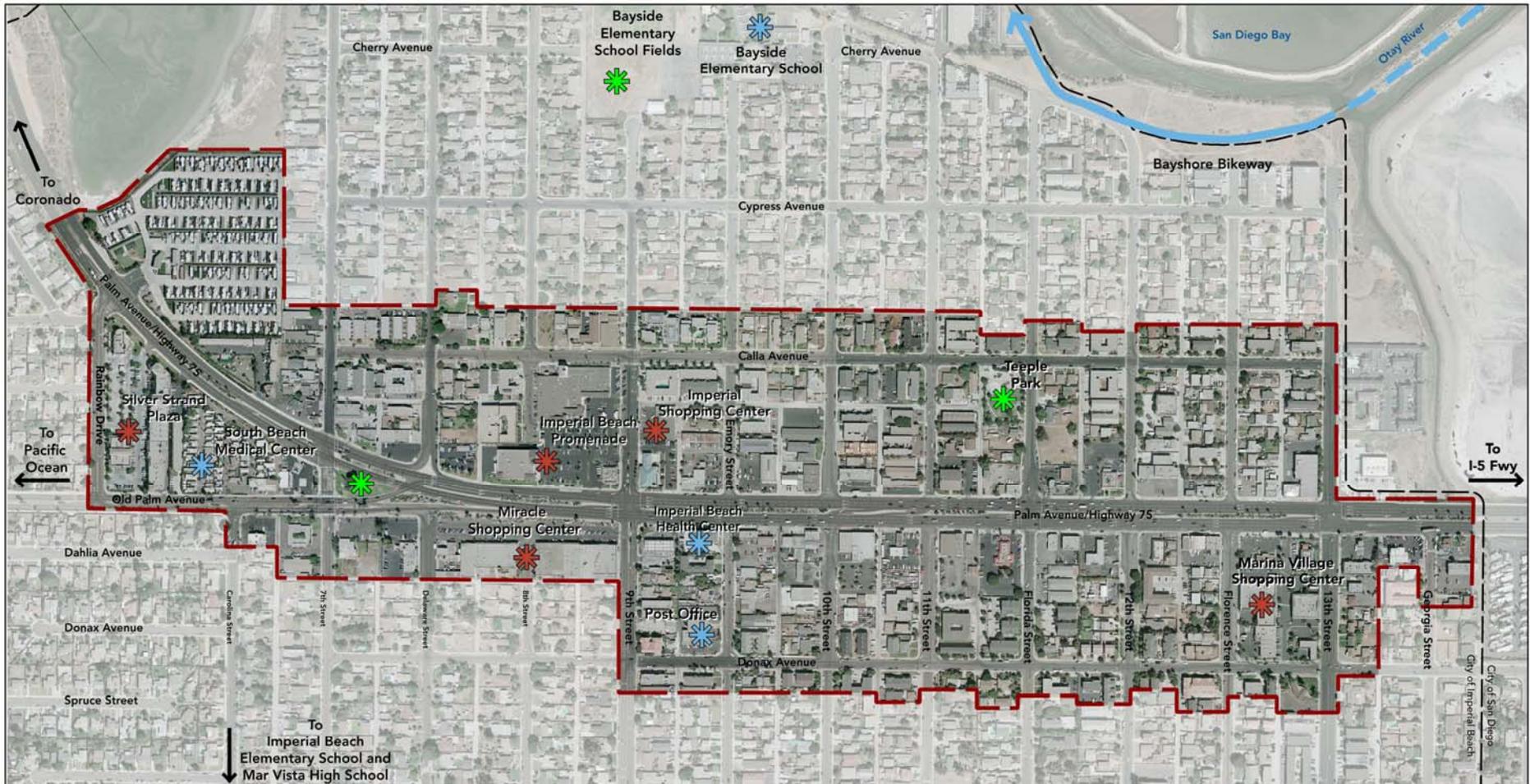
# URBAN DESIGN CONCEPT

CITY OF **IMPERIAL BEACH**

palm avenue commercial corridor master plan



# Study Area



- Project Area Boundary
- City Limits
- Existing Bayshore Bikeway
- Proposed Bayshore Bikeway
- ✿ Community Destination
- ✿ Retail Destination
- ✿ Open Space Destination



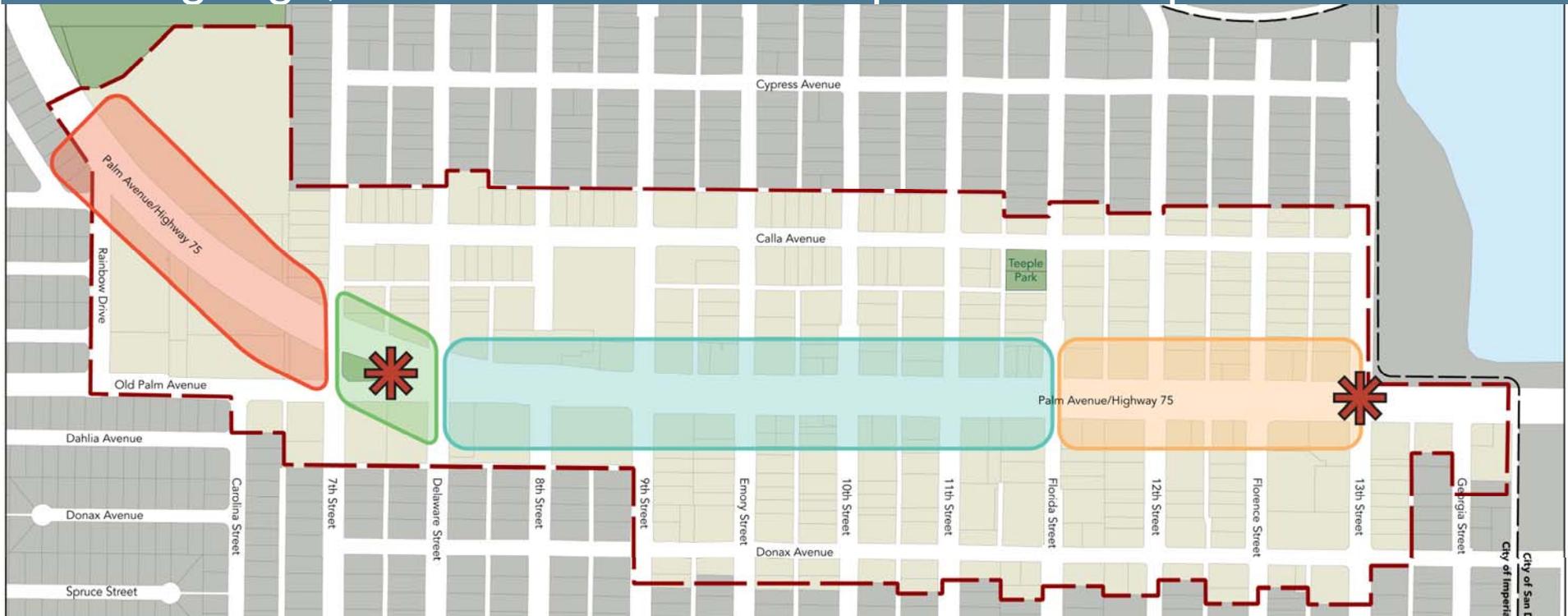
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palm avenue commercial corridor master plan



# Urban Design Concept

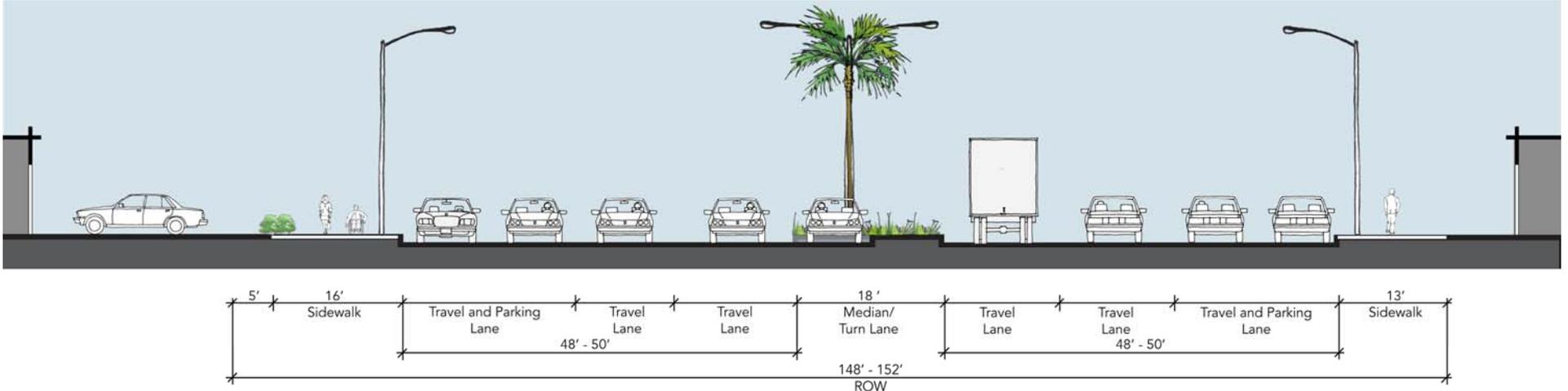
- **Multi-centric:** Interconnected sectors, each with distinct character tied together with common streetscape elements.
- **Well Connected:** Pedestrian connectors, connect to destinations and neighborhoods north and south
- **Unique Identity:** Street sections, gateway elements, signage, etc contribute to a unique streetscape character



# Streetscape Alternatives

## EAST END GATEWAY SECTOR

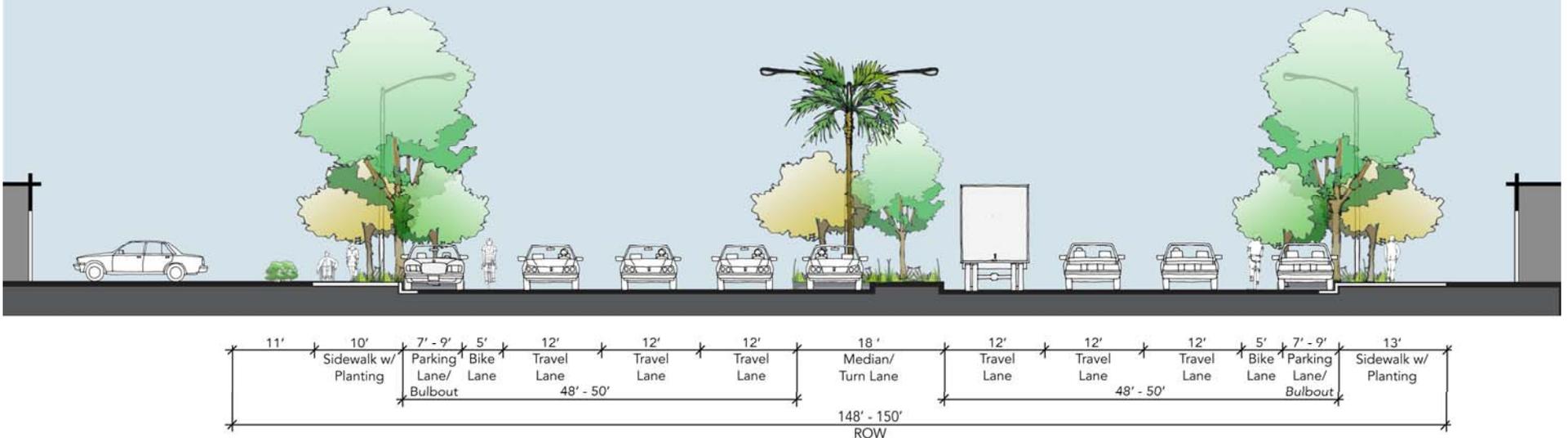
- 13<sup>th</sup> Street to Florida
- Maintain existing 6 lanes of traffic and parking
- Locate bulbouts & bike lanes
- Design iconic gateway element



# Streetscape Alternatives

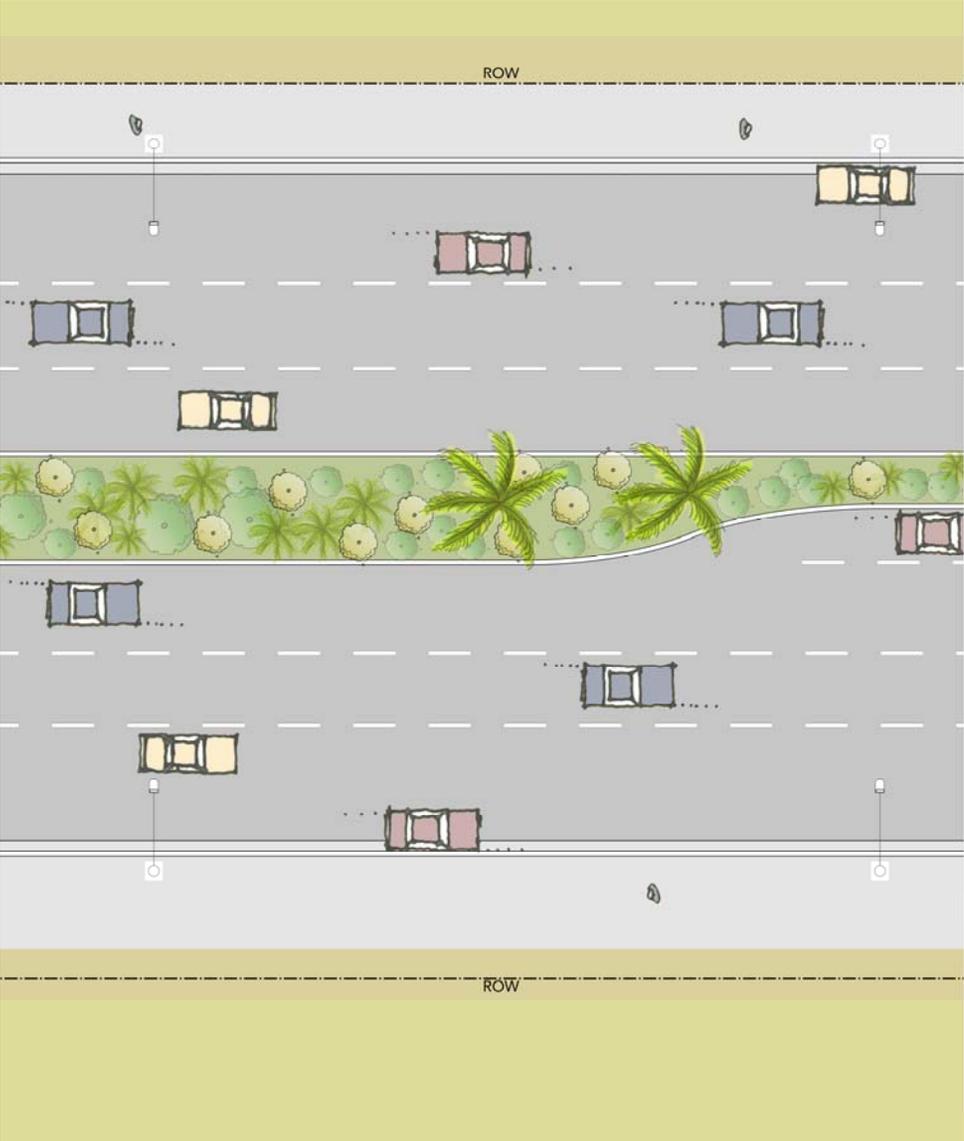
## EAST END GATEWAY SECTOR

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# Streetscape Alternatives

## EAST END GATEWAY SECTOR

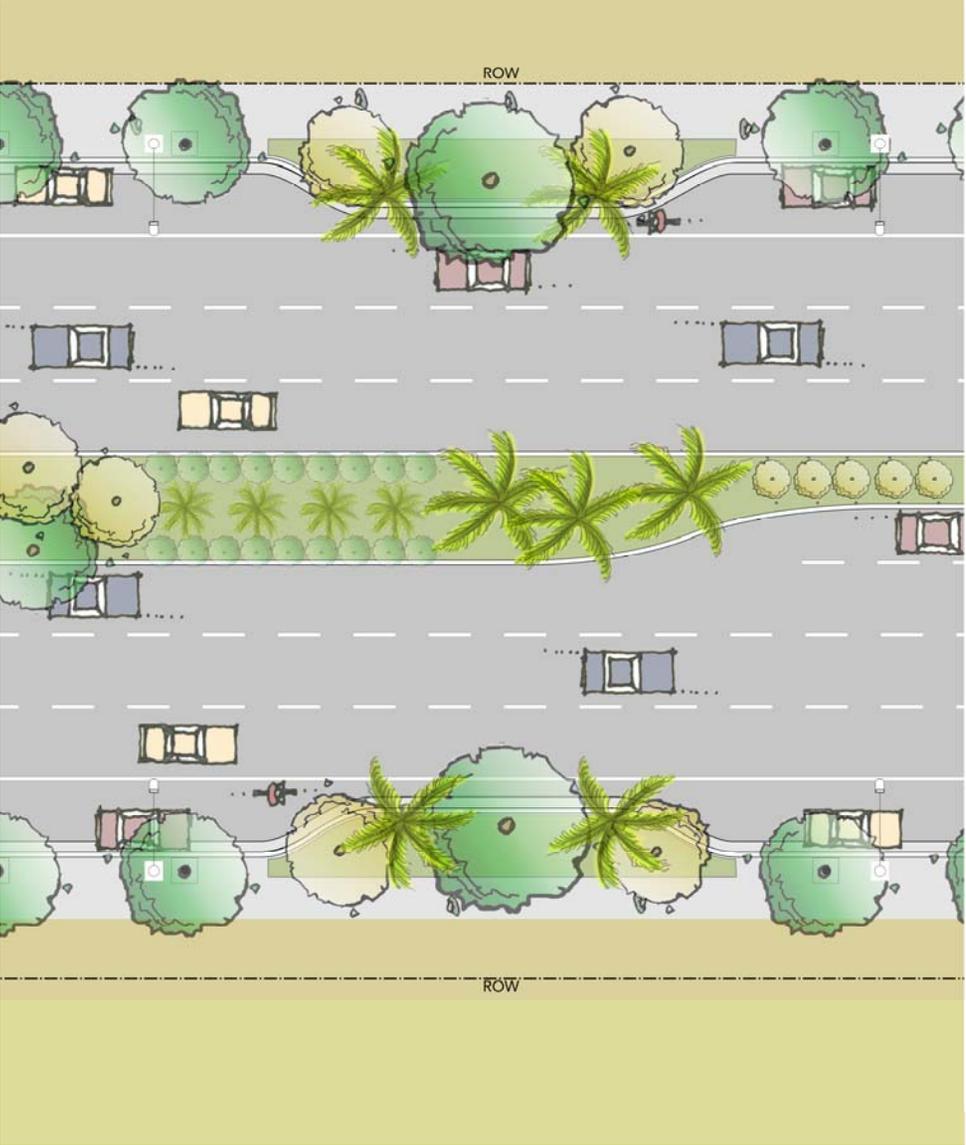


13'	Sidewalk
	Travel and Parking Lane
48'-50'	Travel Lane
	Travel Lane
18'	Median/ Turn Lane
	Travel Lane
48'-50'	Travel Lane
	Travel and Parking Lane
16'	Sidewalk
5'	



# Streetscape Alternatives

## EAST END GATEWAY SECTOR



13'	Sidewalk
7'-9'	Parking Lane
5'	Bike Lane
12'	Travel Lane
12'	Travel Lane
12'	Travel Lane
18'	Median/ Turn Lane
12'	Travel Lane
12'	Travel Lane
12'	Travel Lane
5'	Bike Lane
7'-9'	Parking Lane
10'	Sidewalk
11'	



# Streetscape Alternatives

## MID-TOWN SECTOR

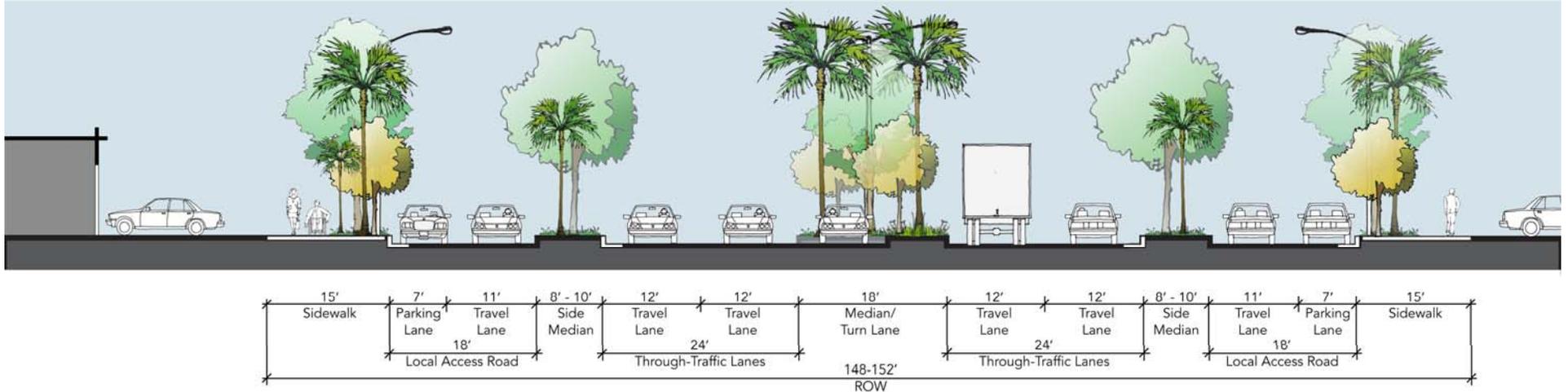
- Florida to Delaware
- Maintain existing 6 lanes of traffic and parking in a multi-way blvd setting
- “Shared” bike lanes within local access lanes



# Streetscape Alternatives

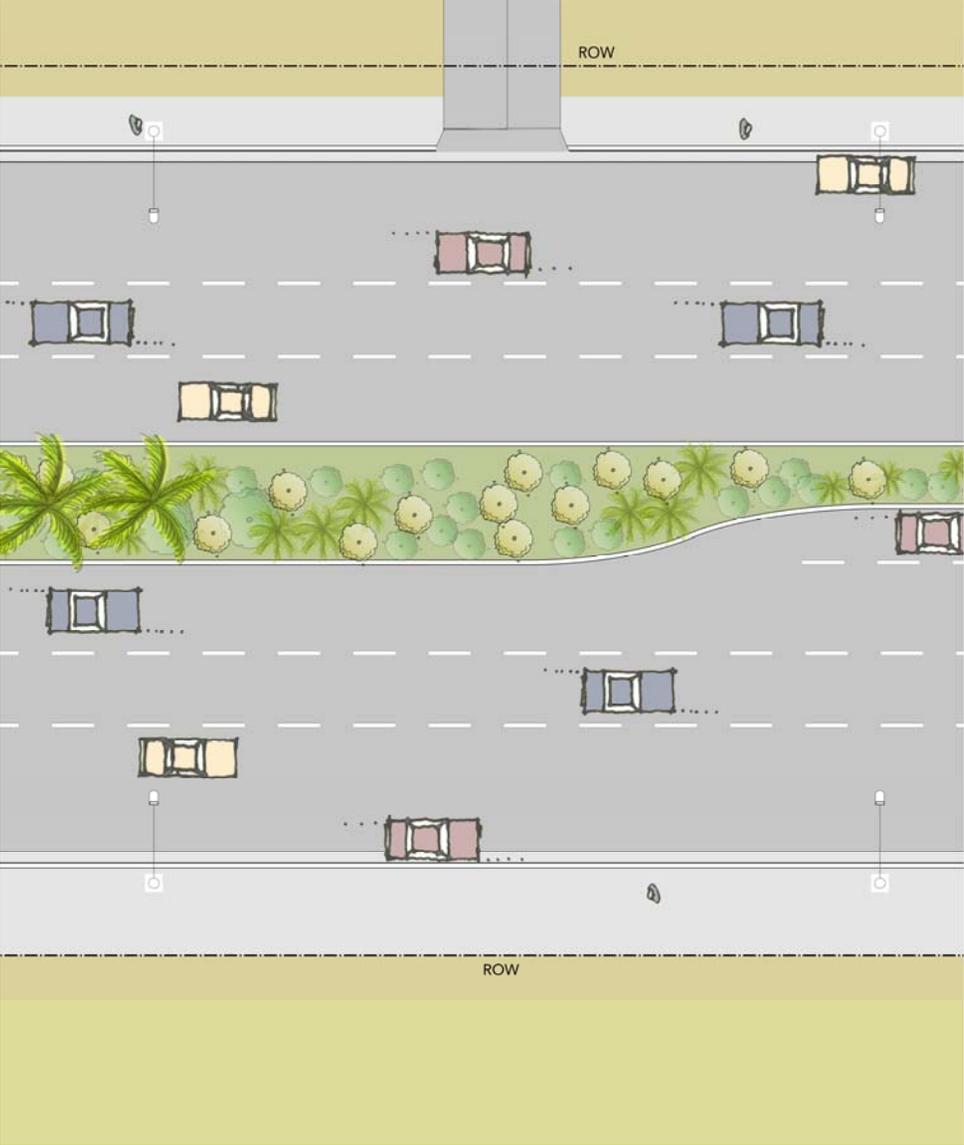
## MID-TOWN SECTOR

- Florida to Delaware
- Maintain existing 6 lanes of traffic and parking in a multi-way blvd setting
- “Shared” bike lanes within local access lanes



# Streetscape Alternatives

## MID-TOWN SECTOR

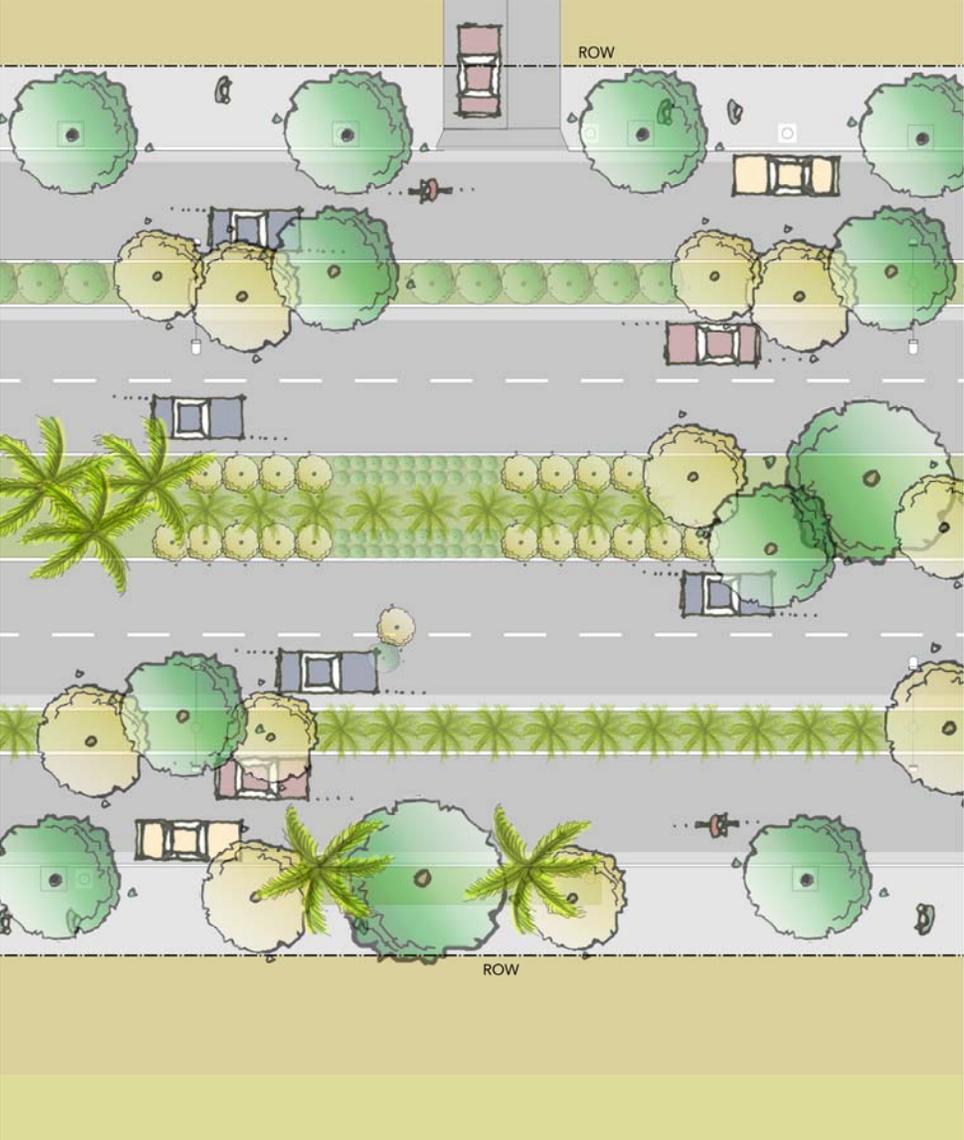


5'	
9'	Sidewalk
	Travel and Parking Lane
49'-51'	Travel Lane
	Travel Lane
21'	Median/Turn Lane
	Travel Lane
49'-51'	Travel Lane
	Travel and Parking Lane
15'	Sidewalk



# Streetscape Alternatives

## MID-TOWN SECTOR



15'	Sidewalk
7'	Parking Lane
11'	Travel Lane
8'-10'	Side Median
12'	Travel Lane
12'	Travel Lane
18'	Median/ Turn Lane
12'	Travel Lane
12'	Travel Lane
8'-10'	Side Median
11'	Travel Lane
7'	Travel Lane
15'	Sidewalk



# Streetscape Alternatives

## PARK SECTOR

- Delaware to 7th
- Streamline overall circulation to enhance existing open space experience
- Explore “park” public space
- Bike route/lane could be explored



# Streetscape Alternatives

## PARK SECTOR



# Streetscape Alternatives

## PARK SECTOR



CITY OF **IMPERIAL BEACH**

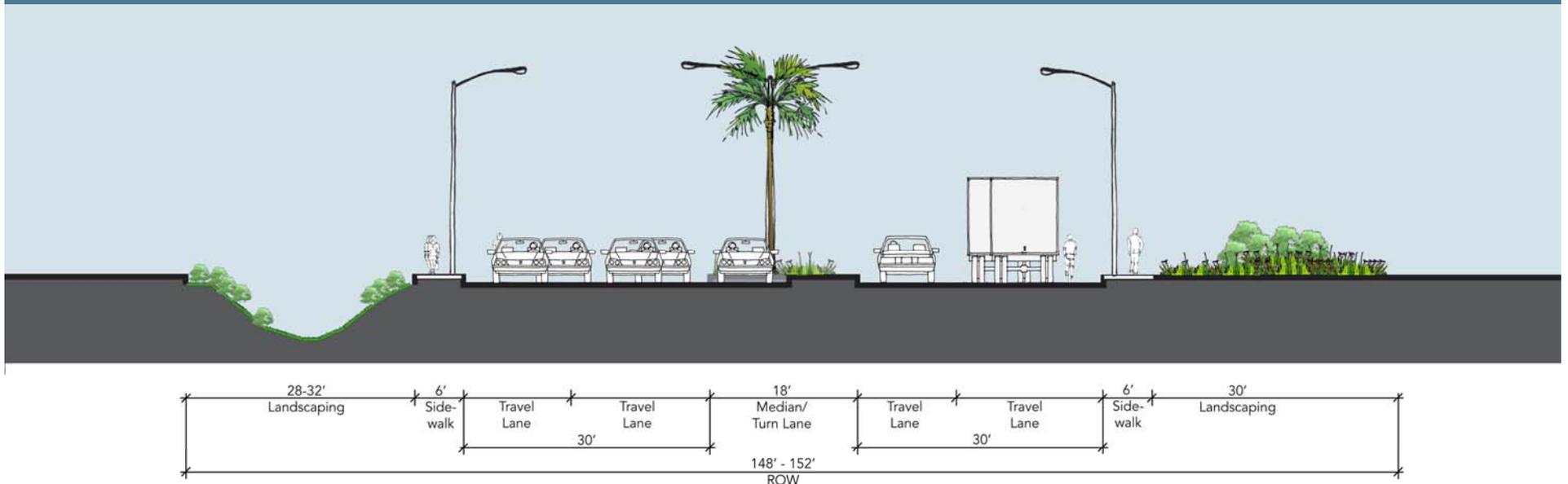
palm avenue commercial corridor master plan



# Streetscape Alternatives

## WEST END SECTOR

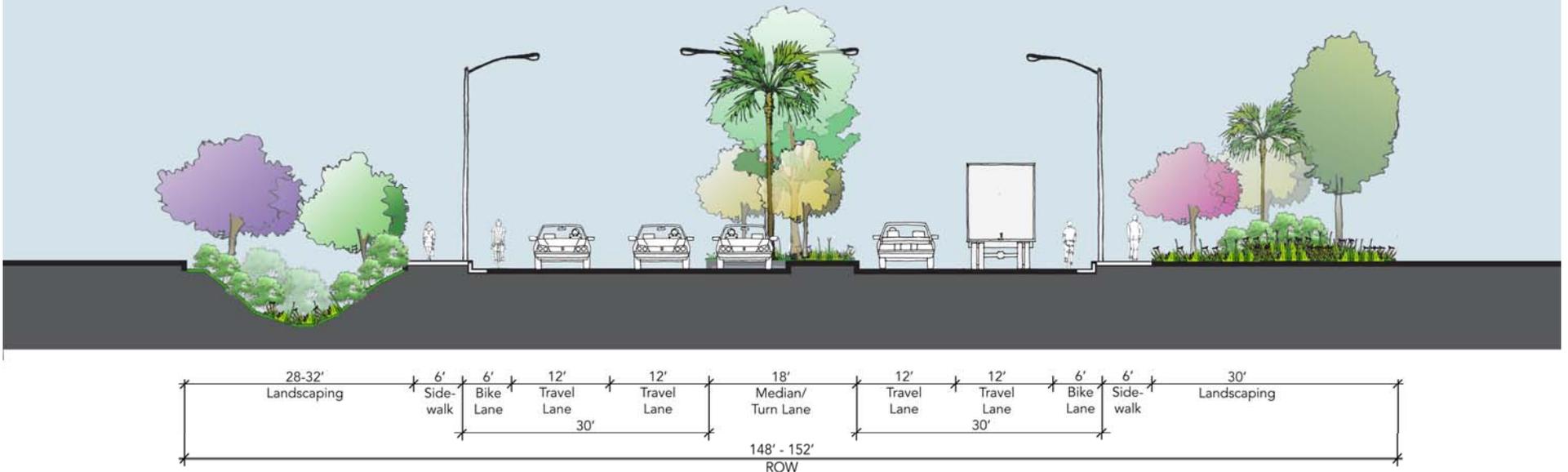
- 7<sup>th</sup> to Rainbow
- Maintain two lanes of traffic in either direction
- “Green street” integrated stormwater landscaping
- Create Bike route/lane



# Streetscape Alternatives

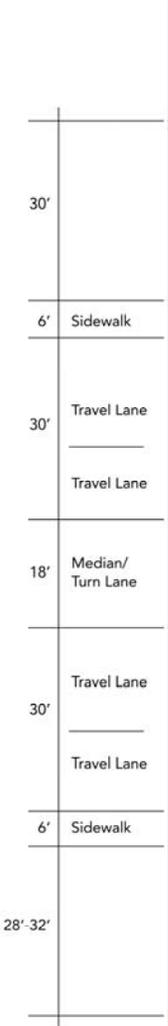
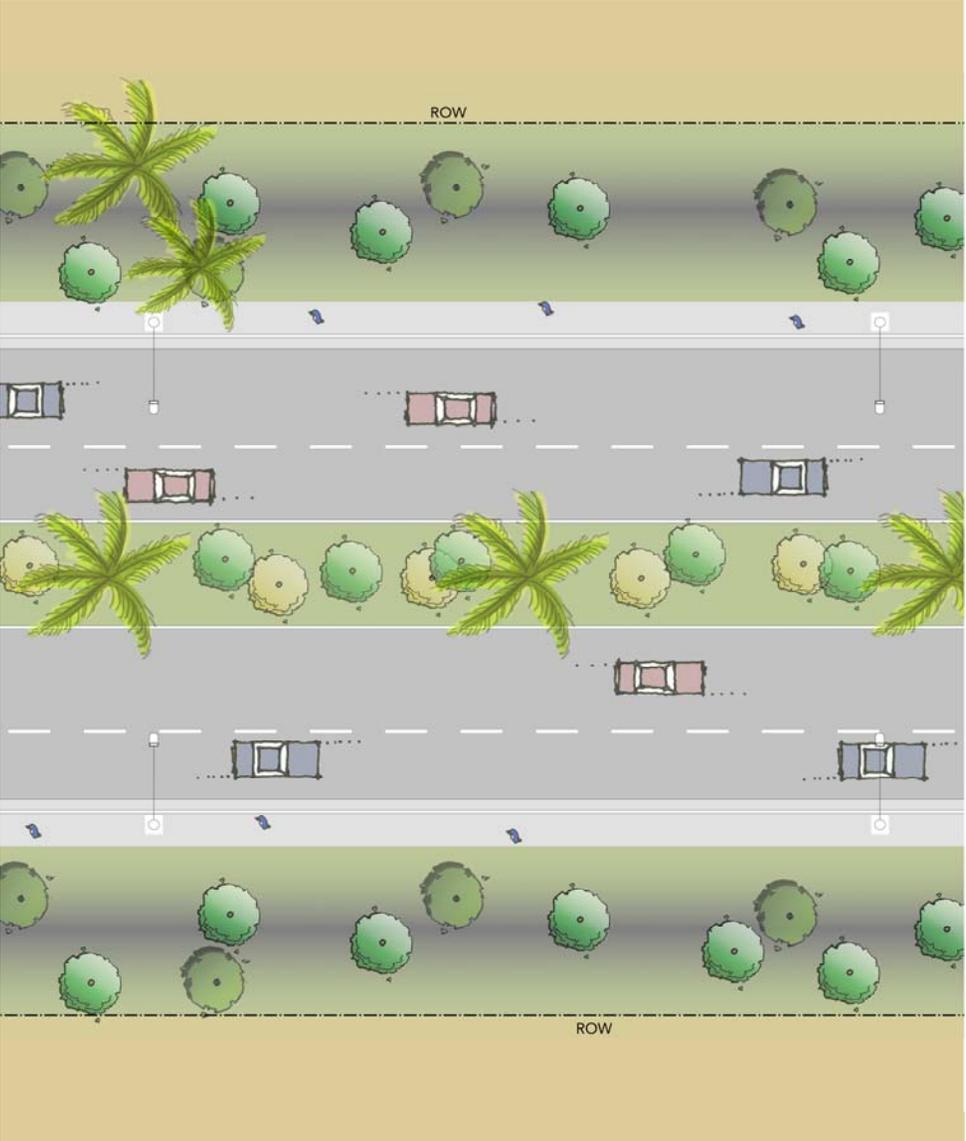
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# Streetscape Alternatives

## WEST END SECTOR



# Streetscape Alternatives

## WEST END SECTOR

