

AGREEMENT BY AND BETWEEN
CITY OF CATHEDRAL CITY AND CITY OF PALM SPRINGS
FOR

WHITEWATERBIKETRAIL

(Construct a Bicycle/Pedestrian Path and Trail on the West Side of Whitewater River Levee
between Vista Chino and Cathedral City, City Limits)

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____ 2016, ("Effective Date"), by and between the City of Cathedral City ("CCC"), a municipal corporation located in the State of California, and the City of Palm Springs ("CPS"), a charter city located in the State of California for the construction and maintenance of a bicycle/pedestrian trail on the west side of Whitewater Levee south of Vista Chino within the boundaries of CPS.

RECITALS

WHEREAS, CCC and CPS share a common jurisdictional boundary between the two cities;
and

WHEREAS, certain proposed public infrastructure improvements required for access to a proposed bicycle/pedestrian trail are to be located north of the common boundary near Vista Chino on the north end of the westerly bank of the White Water River Levee; and

WHEREAS, a portion of the proposed infrastructure improvements will be located within the CPS city limits on real property used as a flood control channel levee by the Riverside County Flood Control and Water Conservation District (RCFCD), as legally described and shown in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, CPS is desirous of cooperating with CCC in providing safe access to the bicycle/pedestrian trail by allowing CCC to construct the trail on CPS property.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and subject to conditions contained herein, the parties hereto agree as follows:

Section 1. Incorporation of Recitals.

All of the above Recitals are true and correct and incorporated herein by this reference to the same extent as though set forth in full.

Section 2. Term and Termination.

This Agreement will become effective immediately upon the document being fully executed and will continue in full force and effect until either party provides notice to terminate by mutual written agreement of the parties. Each party must give at least sixty (60) days written notice to terminate this agreement.

Section 3. CCC Obligations

- a. Provided that CCC is issued a valid encroachment permit from RCFCD allowing for CCC to enter the property and to construct improvements CCC shall install and maintain the bicycle/pedestrian trail improvements during the term of this agreement, CCC agrees that within one hundred twenty (120) days of the effective date of this agreement, CCC shall commence and thereafter diligently complete the

construction and installation of the improvements at its sole cost and expense and in accordance with this Agreement. The CPS City engineer may inspect the work of improvements at any reasonable time. For the purpose of constructing and installing the Improvements, the "lead agency" for compliance with environmental laws, as the term is defined under the California Environmental Quality Act (CEQA), shall be CCC. In this regard, CCC has performed environmental review of this project and determined the project to meet the criteria for a Mitigated Negative Declaration under CEQA.

- b. Upon completion of the Improvements and for five (5) years thereafter, or upon the Coachella Valley Association of Governments (CVAG) assuming responsibility for maintenance, the Bike Path Improvements shall be under CCC's jurisdiction for the following public purposes and municipal responsibilities only and CCC shall be responsible for the following maintenance obligations only:
 - i. Maintenance of Class One Bike Path and Class Two Bike Lane .
 - ii. Class One Bike Paths are paved, road-separated right-of-way for the exclusive use of bicycles and pedestrians with minimal motorist cross flow.
 - iii. Class Two Bike Lanes are striped lanes for one-way bike travel on a street or highway.
 - iv. Class One Bike Path and Class Two Bike Lane maintenance includes cleaning, resurfacing and restriping the asphalt path, repairs to crossings, cleaning drainage systems, trash removal, and landscaping. Underbrush and weed abatement should be performed once in the late spring and again in mid-summer. A maintenance schedule and checklist is provided in Exhibit B.
 - v. Barriers at pathway entrances should be clearly marked with reflectors and American Disabilities Act (ADA) accessible (minimum of five feet entrance).
- c. The jurisdiction of CCC for the maintenance obligations of the Bike Path Improvements for the purposes described in Section 3(b) above shall commence upon the date the CCC City Engineer files a certificate with the City Clerk of both CCC and CPS and records a Notice of Completion attesting to the fact that the construction and installation work of the Bike Path Improvements has been completed.
- d. CCC agrees that the Bike Path Improvements described in Section (a) shall be constructed at no expense to CPS. CCC shall maintain and repair the Bike Path Improvements in the same condition as similar improvements for five years, or until CVAG assumes responsibility for maintenance, at no cost or expense to CPS.
- e. All Class One Bike Paths and Class Two Bike Lanes must follow the minimum bicycle planning and design criteria contained in the California Department of Transportation Highway Design Manual, Chapter 1000, Bikeway Planning and Design. <http://www.dot.ca.gov/hq/oppd/hdm/pdf/english/chp1000.pdf>

Section 4. CPS Obligations

- a. CPS grants CCC permission to construct bicycle/pedestrian improvements within their jurisdiction, on the West Side of the Whitewater River Levee between Vista Chino and Cathedral City City Limits (see Exhibit A).
- b. CPS agrees to assume responsibility for maintenance of the Bike Path Improvements on CPS jurisdiction five years after the Notice of Completion is filed, or until CVAG assumes responsibility for maintenance. CPS can assume responsibility for maintenance of the Bike Path on CPS jurisdiction prior to five years if CPS chooses.

Section 5. Indemnification and Hold Harmless.

- a. CCC agrees to indemnify CPS, its City Council, officers, agents and employees, against and will defend, 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, (hereinafter "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of CCC, its agents, employees, subcontractors, or invitees under this Agreement. CCC agrees to defend any action or actions filed in connection with any of said claims or liabilities asserted or claimed, in accordance with Section 4(a) above, and will pay all reasonable costs and expenses, including legal costs and attorney's fees incurred in connection therewith. CCC shall have sole authority to retain legal counsel of its choice and administer and monitor any litigation or other legal proceeding. CCC shall have sole settlement authority for any claim or liability.
- b. In the event CPS, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against CCC for such damages or other claims arising out of or in connection with negligent performance of the work, operation or activities of CCC hereunder, CCC agrees to pay to CPS, its officers, agents or employees, any and all reasonable costs and expenses deemed to be eligible by CCC and CPS incurred by CPS, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorney fees.
- c. CCC shall require the Contractor selected to construct the Improvements to name CPS and CCC as additional insured(s) and provide a copy of its insurance to CPS.

Section 6. Notice.

- a. Any notice or communication either party desires or is required to give the other party shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch.

City of Cathedral City
68-700 Ave. Lalo Guerrero
Cathedral City, CA 92234
Attn: City Manager

City of Palm Springs
P.O. Box 2743
Palm Springs, CA 92263
Attn: City Manager

- b. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed communicated at the time personally delivered or after seventy two (72) hours from the time of depositing in the U.S. mail, if mailed as provided in this section.

Section 7. Integration.

This Agreement supersedes any and all other agreements, either oral or written, between the parties with respect to the subject matter of this Agreement, and contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement. No amendment, change or modification of this Agreement shall be valid unless in writing, stating that it amends, changes or modifies this MOU, and signed by all the parties.

Section 8. Interpretation.

This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

Section 9. Waiver.

No waiver shall be binding, unless executed in writing by the party making the waiver, and no waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, waiver or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 10. Severability.

If any one or more sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 11. Governing Law.

The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the parties under this Agreement shall be construed pursuant to and in accordance with California law.

Section 12. Rights and Remedies are Cumulative.

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

default by the other party.

Section 13. Venue.

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court in Riverside County, California.

Section 14. Successors of Interest.

This Agreement is and will be binding upon and will inure to the benefit of the parties and legal successors and assigns.

Section 15. Amendments.

This Agreement may be supplemented, amended or modified only by the written agreement of the parties. No supplement, amendment or modification will be binding unless it is in writing and signed by both parties.

Section 16. Counterparts.

This Agreement may be executed by counterparts and shall be deemed to be executed on the last date any such counterpart is executed.

Section 17. Authority to Enter Agreement.

Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

Section 18. Captions and Headings.

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

IN WITNESS WHEREOF, this Agreement has been duly executed by the respective parties hereto by their duly authorized officers as of the date hereinabove first written.

"CCC"

"CPS"

CITY OF CATHEDRAL CITY
A CALIFORNIA MUNICIPAL CORPORATION

CITY OF PALM SPRINGS
A CALIFORNIA CHARTER CITY

STAN HENRY, Mayor

ROBERT MOON, Mayor

ATTEST:

ATTEST:

GARY F. HOWELL, City Clerk

JAMES THOMPSON, City Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

CHARLES P. MCCLENDON, City Manager

DAVID READY, City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

DOUG HOLLAND, City Attorney

Exhibit A

Legal Descriptions and Map of the Properties located in CPS

PARCEL A

Being a portion of Section 7, Township 4 South, Range 5 East, S.B.B.&M;

Commencing at the Southeast corner of Section 7;

Thence North $00^{\circ} 29' 00''$ West along the East line of Section 7, a distance of 2,019.85 feet, to the Point of Beginning;

Thence North $00^{\circ} 29' 00''$ West along the East line of Section 7, a distance of 371.66 feet, to the beginning of a non-tangent curve concave to the Southwest having a radius of 40,200 feet, to which a radial bears North $56^{\circ} 44' 13''$ East;

Thence Northwesterly along the arc of said curve, a distance of 317.29 feet through a central angle of $00^{\circ} 27' 08''$ to the North line of the South half of Section 7;

Thence North $89^{\circ} 44' 33''$ West along the said North line, a distance of 241.44 feet, to the beginning of a non-tangent curve concave to the Southwest having a radius of 40,000 feet, to which a radial bears North $56^{\circ} 05' 29''$ East;

Thence Southeasterly along the arc of said curve, a distance of 763.10 feet through a central angle of $01^{\circ} 05' 35''$ to the Point of Beginning.

PARCEL B

Being a portion of Section 7, Township 4 South, Range 5 East, S.B.B.&M;

Commencing at the Southeast corner of Section 7;

Thence North $00^{\circ} 29' 00''$ West along the East line of Section 7, a distance of 2655.27 feet, to the South line of the North half of Section 7;

Thence North $89^{\circ} 44' 33''$ West along said South line, a distance of 414.45 feet, to the beginning of a non-tangent curve concave to the Southwest having a radius of 40,000 feet, to which a radial bears North $56^{\circ} 05' 29''$ East, being the Point of Beginning;

Thence Northwesterly along the arc of said curve, a distance of 3,291.50 feet through a central angle of $04^{\circ} 42' 53''$ to the North line of Section 7;

Thence South $89^{\circ} 56' 00''$ East along the said North line of Section 7, a distance of 255.83 feet, to the beginning of a non-tangent curve concave to the Southwest having a radius of 40,200 feet to which a radial bears North $51^{\circ} 36' 17''$ East;

Thence Southeasterly along said arc, a distance of 3,283.59 feet through a central angle of $04^{\circ} 40' 48''$ to the South line of the North half of Section 7;

Thence North $89^{\circ} 44' 33''$ West along the said South line, a distance of 241.44 feet to the Point of Beginning.

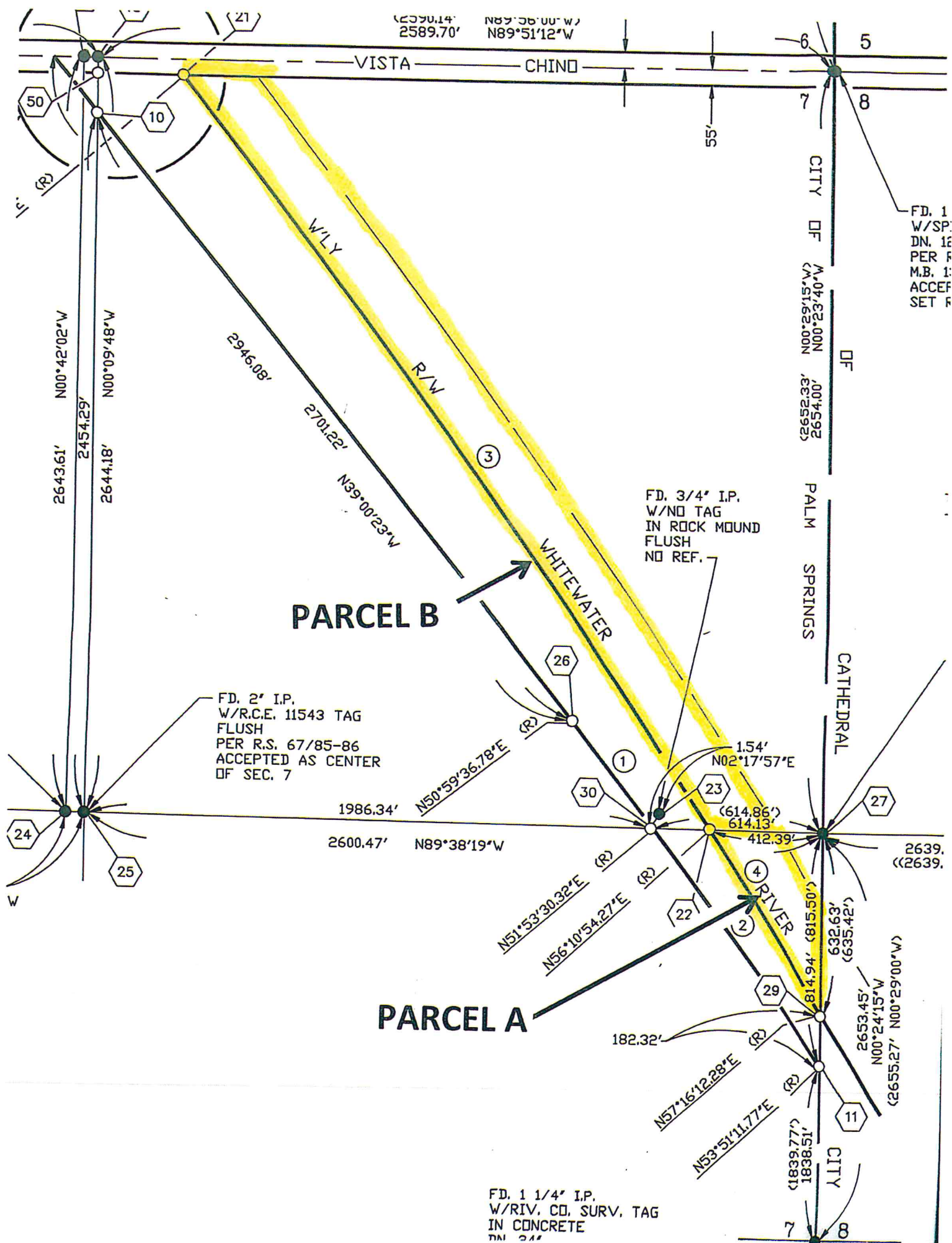


Exhibit B

Bikeway Maintenance Check List and Schedule

Item	Frequency
Sign replacement/repair	1-3 years
Pavement marking replacement	1-3 years
Tree, shrub & grass trimming	5 months – 1 year
Pavement sealing/potholes	5-15 years
Clean drainage system	1 year
Pavement Sweeping	Weekly-Monthly/As needed
Shoulder and grass mowing	Weekly/As needed
Trash disposal	Weekly/As needed
Lighting Replacement/repair	1 year
Graffiti removal	Weekly-monthly/ As needed
Maintain furniture	1 year
Pruning	1-4 years
Remove fallen trees	As needed
Weed control	Monthly/As needed