

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
11.3
(ID # 3366)

MEETING DATE:

Tuesday, February 7, 2017

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of License Agreement for Whitewater River – Right Bank Levee, Stage 2; Project No. 6-0-00250 (Encroachment Permit No. 3561); 4th District [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the License Agreement between the District and City of Cathedral City (City);
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Authorize the General Manager-Chief Engineer to terminate the Agreement at his sole discretion.

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Washington and Ashley
Nays: None
Absent: Tavaglione
Date: February 7, 2017
xc: Flood

Kecia Harper-Ihem
Clerk of the Board
By: *Kecia Harper-Ihem*
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District's Whitewater River-Right Bank Levee from Vista Chino to Ramon Road will be configured, at the sole expense of the City of Cathedral City, as a dual use facility providing certain public recreational uses within District's right of way.

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS:			Budget Adjustment: No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: APPROVE

BACKGROUND:

Summary (continued)

All construction, operation and maintenance costs associated with the public use components will be borne by the City of Cathedral City. The operation and maintenance of the existing flood control facility will continue to be a District responsibility.

County Counsel has approved the Agreement as to legal form and the City has executed the Agreement.

Impact on Residents and Businesses

Upon construction completion, the project will enhance opportunity for pedestrian, bicycle use and low-speed electric vehicles and will benefit residents and businesses in the area.

SUPPLEMENTAL:

Additional Fiscal Information

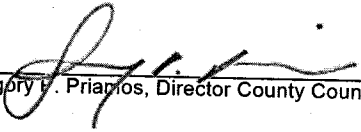
All construction, inspection, operation and maintenance costs associated with the public use components will be borne by the City. The operation and maintenance of the existing flood control facility will continue to be a District responsibility.

ATTACHMENTS:

1. Vicinity Map
2. License Agreement

AMR:blm

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



Gregory F. Priamos, Director County Counsel 1/18/2017

CLERK'S COPY

Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you

LICENSE AGREEMENT

Whitewater River - Right Bank Levee, Stage 2

Project No. 6-0-00250

Encroachment Permit No. 3561

The Riverside County Flood Control and Water Conservation District (the "DISTRICT") and the City of Cathedral City (the "CITY") hereby agree as follows:

RECITALS

A. DISTRICT owns, operates and maintains Whitewater River - Right Bank Levee (the "LEVEE"), principally located in the City of Cathedral City; and

B. LEVEE is an essential and integral part of DISTRICT'S regional system of stormwater management infrastructure that provides critical flood control and drainage to the cities of Cathedral City and Palm Springs and adjacent unincorporated areas; and

C. CITY desires to utilize portions of DISTRICT'S existing LEVEE right of way and easements (the "LEVEE EASEMENT") for public recreation purposes including the construction of trail improvements and certain ancillary uses associated therewith, including walking, jogging, bicycling and low speed electric vehicles between Vista Chino and Ramon Road (the "TRAIL") as shown in concept on Exhibit A, attached hereto and made a part hereof; and

D. LEVEE'S flood control function is sporadic in nature and thus appropriate public recreation and low speed electric vehicles may be accommodated within DISTRICT'S LEVEE EASEMENT to the extent that such uses do not interfere with LEVEE'S principal function or DISTRICT'S ability to operate and maintain LEVEE; and

E. Subject to the provisions of this License Agreement, DISTRICT is willing to (i) allow CITY to construct trail improvements within LEVEE EASEMENT, (ii) allow CITY to operate and maintain said trail improvements and (iii) allow the public to utilize the trail improvements for compatible recreational and low speed electric vehicles use; and

1 F. In accordance with the provisions of this License Agreement, CITY is willing to
 2 (i) prepare or cause to be prepared plans and specifications for TRAIL and submit to DISTRICT
 3 for its review and approval, (ii) cause the construction, inspection, operation and maintenance of
 4 TRAIL at no cost to DISTRICT, (iii) conduct periodic safety inspections of TRAIL and (iv)
 5 indemnify and hold DISTRICT harmless from any claims arising from public's use of TRAIL or
 6 CITY'S responsibilities in connection therewith or the condition thereof; and
 7

8 G. It is in the public interest to proceed with this Agreement.

9 NOW, THEREFORE, the parties hereto mutually agree as follows:

10 SECTION I

11 CITY shall:

12 1. Pursuant to California Environmental Quality Act (CEQA), assume Lead Agency
 13 role and responsibility for preparation, circulation and adoption of all necessary and appropriate
 14 CEQA documents pertaining to construction, operation and maintenance of TRAIL.
 15

16 2. Prior to constructing any improvements or performing any physical modifications
 17 within LEVEE EASEMENT, prepare or cause to be prepared plans and specifications for TRAIL
 18 (the "IMPROVEMENT PLANS") and submit to DISTRICT for review and approval.

19 3. Pay all costs associated with preparation of IMPROVEMENT PLANS and
 20 DISTRICT'S review and approval thereof.
 21

22 4. Pay all costs associated with DISTRICT'S preparation and administration of this
 23 License Agreement.

24 5. Secure, at its sole costs and expense, all necessary permits, approvals, licenses or
 25 agreements as may be required by any federal, state or local resource or regulatory agencies, as
 26 may be needed to construct, inspect, operate and maintain TRAIL.
 27
 28

1 6. Secure, at its sole costs and expense, all necessary approvals from underlying
2 property owners (the "PERMISSIONS") as required to construct, inspect, operate and maintain
3 TRAIL.

4 7. Obtain an encroachment permit from DISTRICT, pursuant to its rules and
5 regulations, and comply with all provisions set forth therein prior to commencing construction
6 of TRAIL or any other improvements within LEVEE EASEMENT.
7

8 8. Prior to commencing construction, furnish DISTRICT with copies of all permits,
9 approvals or agreements as may be required by any federal, state or local resource and/or
10 regulatory agencies for the construction, operation and maintenance of TRAIL. Such documents
11 include, but are not limited to, those issued by the U.S. Fish and Wildlife Service, U.S. Army
12 Corps of Engineers, California Regional Water Quality Control Board, California Department of
13 Fish and Wildlife, State Water Resources Control Board and Coachella Valley - Multiple Species
14 Habitat Conservation Plan (the "REGULATORY PERMITS").
15

16 9. Prior to commencing construction, furnish DISTRICT with copies of all
17 PERMISSIONS for the construction, operation and maintenance of TRAIL.

18 10. Assume sole responsibility for compliance with the requirements of all
19 REGULATORY PERMITS, including any amendments thereto, pertaining to the construction,
20 operation and maintenance of TRAIL.
21

22 11. Ensure that REGULATORY PERMITS, including any subsequent renewal or
23 amendments thereto, will not (i) impede DISTRICT'S ability to perform all necessary operation
24 and maintenance activities for LEVEE as determined by DISTRICT, or (ii) include any
25 stipulations that would result in additional mitigation obligations being placed upon DISTRICT
26 for maintenance operations within LEVEE'S RIGHT OF WAY.
27
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1 12. Cause TRAIL to be constructed in accordance with IMPROVEMENT PLANS
2 approved by DISTRICT, and pay all costs associated therewith.

3 13. Not permit any change to or modification of DISTRICT permitted
4 IMPROVEMENT PLANS without the prior written permission and consent of DISTRICT.

5 14. Assume sole responsibility for the design, construction, operation and
6 maintenance of TRAIL, including all necessary modifications, repairs, corrections or temporary
7 removal as reasonably deemed necessary by DISTRICT for the continuing function,
8 reconstruction, repair or operation and maintenance of LEVEE.

9 15. Within LEVEE EASEMENT, (i) assume sole responsibility for the operation and
10 maintenance of all CITY constructed improvements including, but not limited to, performing all
11 necessary repairs and the routine removal of trash and debris associated with CITY'S use of
12 LEVEE EASEMENT, and (ii) assume all liability associated with the recreational use of LEVEE
13 EASEMENT including claims of third persons for injury or death or damage to property. Said
14 obligation shall not include any inverse condemnation liability of DISTRICT by reason of the
15 location of LEVEE or TRAIL improvements thereto unless such liability is the result of CITY'S
16 operations or use of the property by the public pursuant to CITY'S actual or tacit consent.
17

18 16. Ensure the safety of the public who may utilize the LEVEE EASEMENT by
19 conducting periodic safety inspections and promptly making repairs that are necessary to
20 safeguard the public and its use thereof.
21

22 17. Promptly repair any damage to LEVEE resulting from CITY'S use of LEVEE
23 EASEMENT under the license granted herein unless such damage is caused by flooding, or is
24 the result of DISTRICT'S customary operation, maintenance or improvements to its facilities
25 located therein.
26

1 18. Waive any claim against DISTRICT for damages to TRAIL resulting from
2 DISTRICT'S customary operation and maintenance activities performed within LEVEE
3 EASEMENT or its appurtenant works, including any natural calamity, act of God or any cause
4 or conditions beyond the control of DISTRICT, save and except damages resulting from
5 DISTRICT'S active negligence or willful misconduct.
6

7 19. Immediately remove, upon written request by DISTRICT'S General Manager-
8 Chief Engineer, any improvements and/or equipment not previously approved by DISTRICT, or
9 cease use where CITY has installed any such improvements and/or equipment, or CITY has used
10 or allowed use of LEVEE EASEMENT in a manner which, in the sole opinion of DISTRICT'S
11 General Manager-Chief Engineer, would be detrimental to the operation of LEVEE.
12

13 20. If in the opinion of the DISTRICT'S General Manager-Chief Engineer, the
14 public's use of LEVEE EASEMENT may cause or contribute to a public hazard, a public
15 nuisance, degradation of water quality or any other matter of substantial concern to the
16 DISTRICT, the DISTRICT reserves the right to require remediation and, if remediation is
17 unsuccessful, to terminate this License Agreement.
18

19 21. Indemnify and hold harmless DISTRICT (including its directors, officers, Board
20 of Supervisors, elected and appointed officials, agents, employees, representatives, independent
21 contractors and subcontractors) from any liability whatsoever, based or asserted upon any act or
22 omission of CITY (including its officers, agents, employees, subcontractors, independent
23 contractors, guests and invitees), arising from, related to or in any manner connected with CITY'S
24 use and responsibilities in connection therewith of LEVEE EASEMENT or the condition thereof
25 including, but not limited to, property damage, bodily injury or death or any other element of any
26 kind or nature whatsoever. CITY shall defend, at its sole expense, all costs and fees including,
27 but not limited to, attorneys' fees, cost of investigation, defense and settlements or awards,
28

1 DISTRICT (including its directors, officers, Board of Supervisors, elected and appointed
2 officials, agents, employees, representatives, independent contractors and subcontractors) in any
3 claim or legal action based upon such alleged acts or omissions.

4 SECTION II

5 DISTRICT shall:

- 6
- 7 1. Act as a Responsible Agency under CEQA taking all necessary and appropriate
8 action to comply with CEQA.
- 9 2. Review, comment and approve, as appropriate, IMPROVEMENT PLANS prior
10 to the start of TRAIL construction.
- 11 3. Review, comment and approve, as appropriate, on all REGULATORY
12 PERMITS, including any subsequent renewal or amendments thereto, prior to final execution or
13 acceptance by CITY.
- 14
- 15 4. Upon DISTRICT approval of IMPROVEMENT PLANS, REGULATORY
16 PERMITS and PERMISSIONS, issue an encroachment permit to CITY for the construction,
17 operation and maintenance of TRAIL in accordance with DISTRICT approved
18 IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT'S Encroachment
19 Permit.
- 20
- 21 5. Grant CITY a license to utilize LEVEE EASEMENT for public recreation
22 purposes, provided that CITY'S activities do not, in any way whatsoever, impair LEVEE'S
23 primary flood control purpose and function or otherwise interfere with DISTRICT'S ability to
24 operate, maintain, repair or reconstruct LEVEE or any of its appurtenant works. Said license
25 may be revoked by DISTRICT in the event that said uses unduly compromise LEVEE'S primary
26 flood control purpose and function or interfere with DISTRICT'S ability to operate and maintain
27 LEVEE.
28

1 2. TRAIL shall, at all times, remain sole ownership and exclusive responsibility of
2 CITY. Nothing herein shall be construed as creating any obligation or responsibility on the part
3 of DISTRICT to operate, maintain or warranty TRAIL.

4 3. Except as otherwise provided herein, all construction work associated with
5 TRAIL shall be inspected by CITY, and shall not be deemed complete until approved and
6 accepted as complete by CITY.

7 4. DISTRICT personnel may observe and inspect all work being done on TRAIL. It
8 is further mutually agreed by the parties hereto that any quality control comments shall be
9 provided to CITY personnel who, as CITY construction contract administrator, shall be solely
10 responsible for all official communications with its construction contractor(s).

11 5. Any waiver by DISTRICT or by CITY of any breach of any one or more of the
12 terms of this License Agreement shall not be construed to be a waiver of any subsequent or other
13 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to
14 require exact, full and complete compliance with any terms of this License Agreement shall not
15 be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from
16 enforcement hereof.

17 6. If any provision in this License Agreement is held by a court of competent
18 jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless
19 continue in full force without being impaired or invalidated in any way.

20 7. This License Agreement is to be construed in accordance with the laws of the
21 State of California.

22 8. Any and all notices sent or required to be sent to the parties of this License
23 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:
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25
26
27
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1 RIVERSIDE COUNTY FLOOD CONTROL
2 AND WATER CONSERVATION DISTRICT
3 1995 Market Street
4 Riverside, CA 92501
5 Attn: Operations and Maintenance Division

CITY OF CATHEDRAL CITY
6800 Avenida Lalo Guerrero
Cathedral City, CA 92235
Attn: Bill Simons

6 9. Any action at law or in equity brought by any of the parties hereto for the purpose
7 of enforcing a right or rights provided for by this License Agreement shall be tried in a court of
8 competent jurisdiction in the County of Riverside, State of California, and the parties hereto
9 waive all provisions of law providing for a change of venue in such proceedings to any other
10 county.

11 10. This License Agreement is the result of negotiations between the parties hereto
12 and the advice and assistance of their respective counsel. The fact that this License Agreement
13 was prepared as a matter of convenience by DISTRICT shall have no import or significance.
14 Any uncertainty or ambiguity in this License Agreement shall not be construed against
15 DISTRICT because DISTRICT prepared this License Agreement in its final form.

16 11. This License Agreement is intended by the parties hereto as a final expression of
17 their understanding with respect to the subject matter hereof and as a complete and exclusive
18 statement of the terms and conditions thereof and supersedes any and all prior and
19 contemporaneous agreements and understandings, oral or written, in connection therewith. This
20 License Agreement may be changed or modified only upon the written consent of the parties
21 hereto.

22 //

23 //

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on

FEB 07 2017

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By J. Uhley
JASON E. UHLEY
General Manager-Chief Engineer

By Marion Ashley
MARION ASHLEY, Chairman
Board of Supervisors, Riverside County Flood Control and Water Conservation District

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By Neal R. Kipnis
NEAL R. KIPNIS
Deputy County Counsel

By Kareem
Deputy

(SEAL)

Whitewater River - Right Bank Levee, Stage 2
Project No. 6-0-00250 (EP No. 3561)
License Agreement with City of Cathedral City
AMR:bad
12/29/16

CITY OF CATHEDRAL CITY

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By _____
CHARLES P. MCCLENDON
City Manager

APPROVED AS TO FORM:

ATTEST:

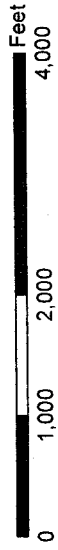
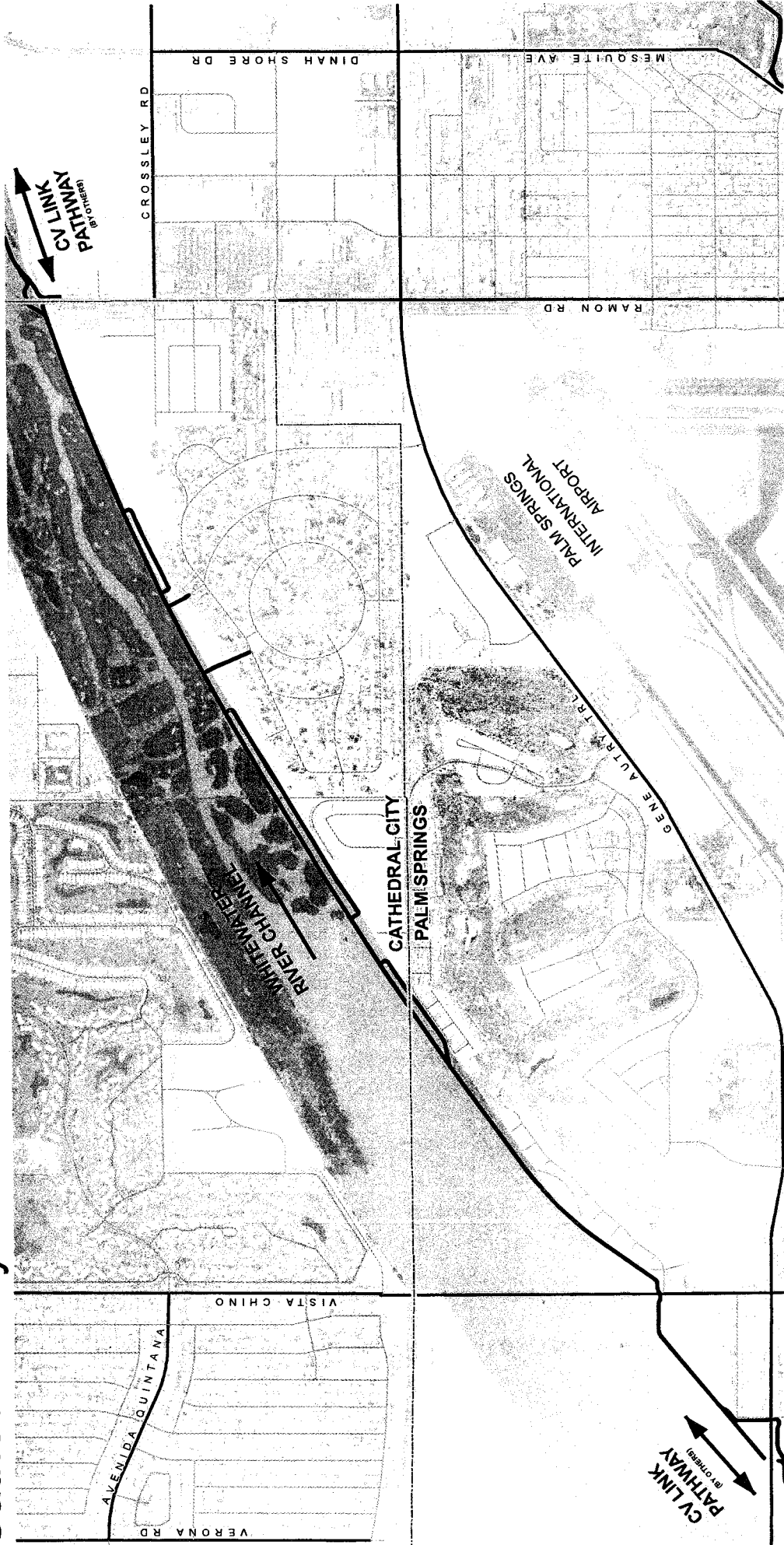
By _____
ERIC S. VAIL
City Attorney

By _____
GARY F. HOWELL
City Clerk

(SEAL)

Whitewater River - Right Bank Levee, Stage 2
Project No. 6-0-00250 (EP No. 3561)
License Agreement with City of Cathedral City
AMR:bad
12/29/16

Cathedral City Whitewater Bike Path



Date: 8/15/2016



Cathedral City

Legend EXHIBIT A

-  Cathedral City Whitewater Bike Path
-  CV LINK Pathway
-  Jurisdictional Boundary