

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



ITEM
11.1
(ID # 7782)

MEETING DATE:

Tuesday, August 28, 2018

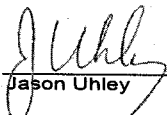
FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Adoption of Resolution F2018-20 Making Responsible Agency Findings Pursuant to the California Environmental Quality Act for the Cathedral Canyon Drive Low Water Crossing at Whitewater River Project ("Project"); Approval of License Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Cathedral City for the Project, Project No. 6-0-00250 (Encroachment Permit No. 3550). District 4. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt Resolution No. F2018-20, Making Responsible Agency Findings Pursuant to the California Environmental Quality Act (CEQA) and Adopting a Mitigation Monitoring and Reporting Program for the Cathedral Canyon Drive Low Water Crossing at Whitewater River Project;
2. Approve the License Agreement between the Riverside County Flood Control and Water Conservation District and the City of Cathedral City (City), and authorize the Chairman of the Board to execute the same on behalf of the District;
3. Authorize the General Manager-Chief Engineer, at his sole discretion, to terminate the Agreement in accordance with the terms and conditions of the Agreement;
4. Direct the Clerk of the Board to return two (2) executed License Agreements to the Riverside County Flood Control and Water Conservation District; and
5. Direct the Clerk of the Board to file the Notice of Determination with the County Clerk within five days of approval by the Board.

ACTION: Policy



Jason Uhley

8/16/2018

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: August 28, 2018
xc: Flood, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

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

| 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: The City is funding all construction, inspection, operation and maintenance costs (100%) | | | Budget Adjustment: No | |
| | | | For Fiscal Year: N/A | |

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which District will allow the City of Cathedral City ("City") to construct, inspect, operate and maintain a bridge and associated appurtenances ("Project") within Cathedral Canyon Drive spanning the District's Whitewater River – Right Bank Levee.

The City of Cathedral City proposes to replace Cathedral Canyon Drive's low water crossing over the Whitewater River with a concrete bridge. The low water crossing gets overtopped and becomes unsafe to use during flood events. Replacing the low water crossing with a bridge will allow safe use of the road in all weather conditions. The bridge will not conflict with the Levee's primary function or the District's continuing operation and maintenance of the facilities. The District, in accordance with the terms of the License Agreement, will license the dual use of the right of way to the City. Upon completion of construction, the City will assume ownership and responsibility for the operation and maintenance of the bridge and associated appurtenances and responsibility for the operation and maintenance of a portion of the levee located within its rights of way.

The proposed action consists of entering into a License Agreement with terms that govern the construction and maintenance of the bridge and appurtenant structures. The District, as a CEQA responsible agency, would agree to these terms and allow the City to construct the bridge within the District's right of way and take over maintenance responsibilities of a portion of the levee. State CEQA Guidelines Section 15096 requires the District, as a responsible agency, to consider the environmental documents adopted by the lead agency and make certain findings pursuant to State CEQA Guidelines Section 15091.

Pursuant to CEQA, the City of Cathedral City is the lead agency for the Project. In accordance with CEQA, the City, on June 8, 2011, at a noticed public meeting, reviewed and considered an Initial Study, Mitigated Negative Declaration ("MND"), a Mitigation Monitoring and Reporting Program, the Project, and all oral and written comments received, and adopted the Initial Study, MND, and Mitigation Monitoring and Reporting Program, and approved the Project (State Clearinghouse # 2011041037). As indicated in Resolution No. F2018-20, the District adopts the

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

required findings and mitigation measures in its limited role as a responsible agency under CEQA and has completed a Notice of Determination (NOD). Other than filing the District's NOD with the County Clerk, no further action is required under CEQA.

County Counsel has approved Resolution F2018-20 and the License Agreement as to legal form, and the City has executed the License Agreement.

Impact on Residents and Businesses

This project is part of the Caltrans Highway Bridge Program. . The low water crossing gets overtopped and becomes unsafe to use during flood events. Replacing the low water crossing with a bridge will allow safe use of the road in all weather conditions. The residents and businesses of City of Cathedral City are the primary beneficiaries of the proposed bridge project.

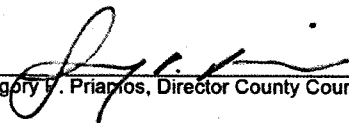
Additional Fiscal Information

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. Resolution F2018-20
2. License Agreement
3. Vicinity Map
4. Notice of Determination

AMR:blm
P8/221364



Gregory F. Priamos, Director County Counsel 8/16/2018

2
3 RESOLUTION NO. F2018-20

4 A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
5 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, MAKING
6 RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL
7 QUALITY ACT AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM
8 FOR THE CATHEDRAL CANYON DRIVE LOW WATER CROSSING AT WHITEWATER RIVER
9 PROJECT

10 **WHEREAS**, the Riverside County Flood Control and Water Conservation District ("DISTRICT"), a
11 body politic, is to make certain limited approvals for the Cathedral Canyon Drive Low Water Crossing (New
12 Bridge) at Whitewater River Project ("PROJECT"), specifically by issuing an Encroachment Permit
13 ("PERMIT") to the City of Cathedral City ("CITY") and entering into a License Agreement ("LICENSE
14 AGREEMENT") with the CITY; and

15 **WHEREAS**, DISTRICT operates and maintains the Whitewater River – Right Bank Levee (Project
16 No. 6-0-00250), hereinafter called "LEVEE", principally located in the City of Cathedral City; and

17 **WHEREAS**, the LEVEE is an essential and integral part of DISTRICT's regional system of
18 stormwater management infrastructure that provides critical flood control and drainage to the city of
19 Cathedral City; and

20 **WHEREAS**, CITY wishes to (i) design and construct approximately 1,056 lineal feet of slab bridge,
21 roadway segments and ancillary structures within Cathedral Canyon Drive to replace the existing low water
22 crossing; (ii) reconstruct portions of the LEVEE and install new slope protection; and (iii) construct other
23 concrete and riprap structures within the wash, hereinafter called "PROJECT"; and

24 **WHEREAS**, a portion of PROJECT is located within the "LEVEE RIGHT OF WAY", which
25 consists of DISTRICT's existing right of way identified as DISTRICT's Parcel Number 6205-2, as shown in
26 concept in red on the Exhibit A attached hereto and incorporated herein by reference; the CITY will assume
27 permanent maintenance responsibilities over an approximately 350-foot section of the LEVEE ("CITY
28 LEVEE"); and

WHEREAS, CITY desires to utilize portions of DISTRICT's LEVEE RIGHT OF WAY for

FORM APPROVED COUNTY COUNSEL
BY: THOMAS OH
DATE 8/16/18

1 construction of the PROJECT; and

2 **WHEREAS**, subject to the provisions and approval of the PERMIT and LICENSE AGREEMENT,
3 DISTRICT is willing to (i) allow CITY to construct, or cause to be constructed, PROJECT within LEVEE
4 RIGHT OF WAY; and (ii) allow CITY to operate and maintain said PROJECT and assume responsibility
5 over the portion of the LEVEE referred to in the LICENSE AGREEMENT as CITY LEVEE, as shown in
6 concept in green on the Exhibit A attached hereto and incorporated herein by reference; and

7 **WHEREAS**, on June 8, 2011, the CITY, as the Lead Agency under the California Environmental
8 Quality Act ("CEQA"), at a noticed public meeting, reviewed and considered the Initial Study, Mitigated
9 Negative Declaration ("MND"), a Mitigation Monitoring and Reporting Program, the PROJECT, and all oral
10 and written comments received, and adopted the Initial Study, MND, and Mitigation Monitoring and
11 Reporting Program, and approved the PROJECT; and

12 **WHEREAS**, the DISTRICT has limited approval and implementing authority over the PROJECT,
13 and, therefore, pursuant to Section 15096 of the State CEQA Guidelines, serves only as a Responsible Agency
14 for the PROJECT; and

15 **WHEREAS**, pursuant to Section 15096 of the State CEQA Guidelines, the DISTRICT, acting as a
16 Responsible Agency, considered the environmental effects of the PROJECT as evaluated in the prior Initial
17 Study, MND, and Mitigation Monitoring and Reporting Program and determined the Initial Study, MND,
18 and Mitigation Monitoring and Reporting Program to be adequate as certified by the CITY because it
19 adequately analyzes the potential environmental impacts associated with DISTRICT's limited role as a
20 Responsible Agency in the implementation of the PROJECT; and

21 **WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

22 **NOW THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED** by the Board of
23 Supervisors of the Riverside County Flood Control and Water Conservation District assembled in regular
24 session on August 28, 2018 in the meeting room of the Board of Supervisors located on the 1st Floor of the
25 County Administrative Center, 4080 Lemon Street, Riverside, California, based upon the evidence and
26 testimony presented on the matter, both written and oral, including the Initial Study, MND, and Mitigation
27 Monitoring and Reporting Program as it relates to the PERMIT and LICENSE AGREEMENT, does hereby
28 make the following findings and resolutions:

1 **SECTION 1. CEQA Actions.**

2 (a) Consideration of the Initial Study, MND and Adoption of Findings Regarding CEQA
3 Compliance. As the decision-making body for the DISTRICT, and in DISTRICT's limited role as a
4 Responsible Agency under CEQA, the Board has received, reviewed, and considered the information
5 contained in the Initial Study and MND for the PROJECT, all comment letters, and other related
6 documents (collectively, the "Documents"). The PERMIT and LICENSE AGREEMENT are within
7 the scope of the Documents, and taken together, the environmental effects of the PROJECT have
8 been adequately addressed in the Documents. Based on this review, the Board finds that, as to those
9 potential environmental impacts within the DISTRICT powers and authorities as Responsible
10 Agency, the Initial Study and MND for the PROJECT contain a complete, objective, and adequate
11 reporting of those potential impacts and reflects the independent judgment and analysis of the
12 DISTRICT.

13 (b) CEQA Findings on Environmental Impacts. In its limited role as a Responsible
14 Agency under CEQA, the Board finds that the PROJECT will not have any significant environmental
15 impacts. The Board further finds that the mitigation measures imposed by the Lead Agency are
16 sufficient to reduce all potentially significant impacts to a level of less than significant. As such, the
17 Board concurs with the environmental findings adopted by the Lead Agency, and therefore, the
18 DISTRICT adopts those findings as its own and incorporates them herein by reference.

19 (c) Adoption of Mitigation Monitoring and Reporting Program. The Board hereby approves
20 and adopts the Mitigation Monitoring and Reporting Program as it relates to the PERMIT and
21 LICENSE AGREEMENT, which was prepared for the PROJECT and approved by the Lead Agency.

22 **SECTION 2. Approval of the Project.** As required by State CEQA Guidelines Section 15096 and
23 in its limited role as a Responsible Agency under CEQA, the Board hereby approves the PROJECT.

24 **SECTION 3. Notice of Determination.** The Board hereby directs the Clerk of the Board to file a
25 Notice of Determination with the Riverside County Clerk and with the Governor's Office of Planning
26 and Research within five (5) working days of the approval of the PROJECT.

1 **SECTION 4.** Custodian of Records. The documents and materials that constitute the record of
2 proceedings on which these findings are based are located at the offices of the Clerk of the Board of
3 Supervisors for the District at 4080 Lemon Street, 1st Floor, Riverside, CA 92501.

4 **SECTION 5.** Execution of Resolution. The Clerk of the Board shall sign this Resolution to attest
5 and certify to the passage and adoption thereof.

6
7
8 ROLL CALL:

9 Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
10 Nays: None
11 Absent: None

12 The foregoing is certified to be a true copy of a resolution duly
13 adopted by said Board of Supervisors on the date therein set forth.

14 KECIA HARPER-IHEM, Clerk of said Board

15 By  _____

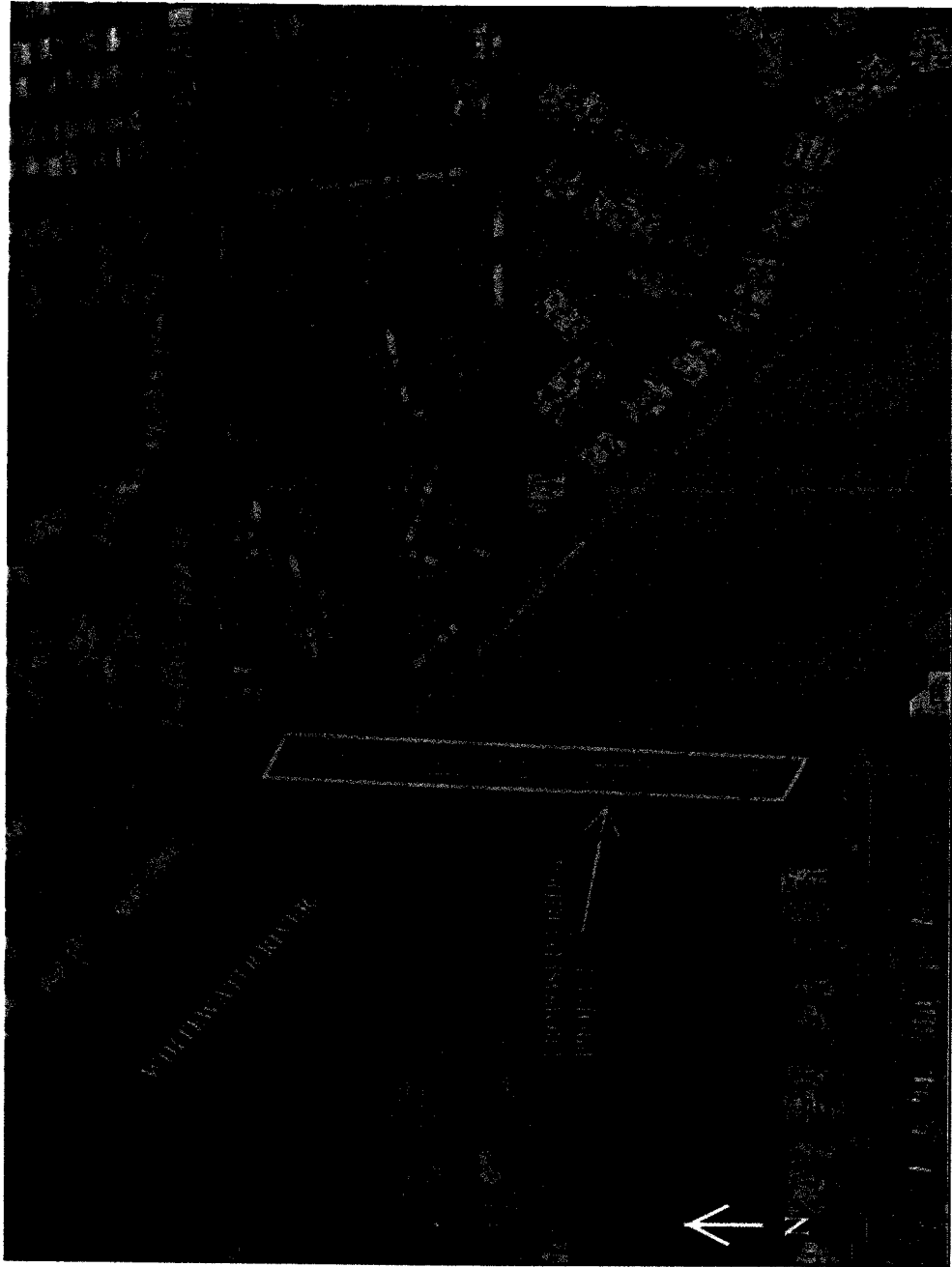
16 Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

(attached on following page)

Exhibit A



LICENSE AGREEMENT

Whitewater River – Right Bank Levee, Stage 2

Project No. 6-0-00250

Encroachment Permit No. 3550

Page 1 of 1

LICENSE AGREEMENT

Whitewater River – Right Bank Levee, Stage 2

Project No. 6-0-00250

Encroachment Permit No. 3550

The Riverside County Flood Control and Water Conservation District, a body politic, (the "DISTRICT"), and the City of Cathedral City, a municipal corporation of the State of California, (the "CITY"), hereby agree as follows:

RECITALS

A. DISTRICT owns, operates and maintains Whitewater River – Right Bank Levee (the "LEVEE"), principally located in 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 has budgeted for and plans to: (i) design, construct and replace the existing low water crossing with approximately 1,056 lineal feet of slab bridge, roadway segments and ancillary structures (the "CROSSING") within Cathedral Canyon Drive, (ii) reconstruct portions of LEVEE and install new slope protection (together known as the "SLOPE PROTECTION"), and (iii) construct other concrete and rip rap structures within the wash (the "AUXILIARY STRUCTURES). Together, CROSSING, SLOPE PROTECTION, and AUXILIARY STRUCTURES are hereinafter called "BRIDGE", as shown in concept in yellow on Exhibit A, attached hereto and made a part hereof; and

D. Said BRIDGE will span LEVEE right of way, (the "LEVEE RIGHT OF WAY"), as shown in concept in red on Exhibit A, for public purposes, including vehicular traffic, bicycling, and pedestrian usage; and

E. LEVEE's flood control function is sporadic in nature and thus, construction

and operation of BRIDGE may be accommodated within LEVEE RIGHT OF WAY to the extent that such uses do not unreasonably interfere with LEVEE's principal function or DISTRICT's ability to operate and maintain LEVEE; and

F. CITY will act as the sole lead agency pursuant to the California Environmental Quality Act (CEQA). As such, CITY will have the corresponding responsibility to fulfill the obligations of a CEQA lead agency with respect to BRIDGE; and

G. Subject to the provisions of this License Agreement, DISTRICT is willing to (i) allow CITY to cause the construction of BRIDGE within its LEVEE RIGHT OF WAY, (ii) allow CITY to operate and maintain the portion of BRIDGE located within its LEVEE RIGHT OF WAY for public convenience, and (iii) allow City to take over operation, repair, and maintenance of a portion of LEVEE starting from Cathedral Canyon Drive extending downstream to the terminus of BRIDGE project, as shown in concept in green on Exhibit A, ("CITY LEVEE"); and

H. In accordance with the provisions of this License Agreement, CITY will (i) prepare, or cause to be prepared, plans and specifications for BRIDGE and submit to DISTRICT for its review and written approval, (ii) cause the construction, inspection, operation, repair, and maintenance of BRIDGE at no cost to DISTRICT, (iii) conduct periodic safety inspections of BRIDGE, (iv) accept ownership and responsibility for the structural integrity of BRIDGE, and (v) indemnify, defend, and hold DISTRICT harmless from any claims arising from public's use of BRIDGE or CITY's responsibilities in connection therewith or the condition thereof; and

I. It is in the public interest to proceed with this License Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION I

CITY shall:

1. Pursuant to CEQA, assume lead agency role and responsibility for preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to construction, operation and maintenance of BRIDGE.
2. Prior to constructing any improvements or performing any physical modifications within LEVEE RIGHT OF WAY, prepare or cause to be prepared, plans and specifications for BRIDGE (the "IMPROVEMENT PLANS"), and submit to DISTRICT (Attn: Operations Engineering) for review and written approval.
3. Pay all costs associated with preparation of IMPROVEMENT PLANS and DISTRICT's review and approval thereof.
4. Pay all costs associated with DISTRICT's preparation and administration of this License Agreement.
5. Secure, at its sole costs and expense, all necessary permits, approvals, licenses or agreements as may be required by any federal, state or local resource or regulatory agencies, as may be needed to construct, inspect, operate and maintain BRIDGE.
6. Obtain an encroachment permit from DISTRICT, pursuant to its rules and regulations and comply with all provisions set forth therein, prior to commencing construction of BRIDGE or any other improvements within LEVEE RIGHT OF WAY.
7. Prior to commencing construction of BRIDGE within LEVEE RIGHT OF WAY, furnish DISTRICT with copies of all permits, approvals or agreements as may be required by any federal, state or local resource and/or regulatory agencies for the construction, operation, inspection, and maintenance of BRIDGE. Such documents include but are not limited to those issued by the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, California Regional

Water Quality Control Board, California Department of Fish and Wildlife, the State Water Resources Control Board, and the Coachella Valley Conservation Commission (the "REGULATORY PERMITS").

8. Assume sole responsibility for compliance with the requirements of all REGULATORY PERMITS, including any amendments thereto, pertaining to the construction, operation, inspection, and maintenance of BRIDGE.

9. Ensure that REGULATORY PERMITS, including any subsequent renewal or amendments thereto, will not (i) unreasonably impede DISTRICT's ability to perform all necessary operation and maintenance activities for LEVEE as determined by DISTRICT, or (ii) include any stipulations that would result in additional mitigation obligations being placed upon DISTRICT for maintenance operations within LEVEE RIGHT OF WAY.

10. Cause BRIDGE to be constructed, in accordance with IMPROVEMENT PLANS approved by DISTRICT, and pay all costs associated therewith.

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

12. Assume sole responsibility for the design, construction, operation, inspection, repair, and maintenance of BRIDGE and CITY LEVEE, including all necessary modifications, repairs, corrections or temporary removal as reasonably deemed necessary by DISTRICT for the continuing function, reconstruction, repair or operation and maintenance of LEVEE

13. Within LEVEE RIGHT OF WAY, (i) assume sole responsibility for the operation and maintenance of all CITY constructed improvements, including but not limited to, performing all necessary repairs and the routine removal of trash and debris associated with CITY's use of LEVEE RIGHT OF WAY, (ii) assume sole responsibility for the structural

integrity of BRIDGE and CITY LEVEE, and (iii) assume all liability associated with the public use of BRIDGE including claims of third persons for injury or death or damage to property. Said obligation shall not include any inverse condemnation liability of DISTRICT by reason of the location of LEVEE or BRIDGE improvements thereto unless such liability is the result of CITY's operations or use of the property by the public pursuant to CITY's actual or tacit consent.

14. Ensure the safety of the public who may utilize BRIDGE by conducting periodic safety inspections and promptly making repairs that are necessary to safeguard the public and its use thereof.

15. Promptly repair any damage to LEVEE resulting from CITY's use of LEVEE RIGHT OF WAY under the license granted herein unless such damage is caused by flooding, or is the result of DISTRICT's customary operation, maintenance or improvements to its facilities located therein.

16. Waive any claim against DISTRICT for damages to BRIDGE or CITY LEVEE resulting from DISTRICT's operation and maintenance activities performed within LEVEE RIGHT OF WAY or its appurtenant works, including any natural calamity, act of God, or any cause or conditions beyond the control of DISTRICT, save and except damages resulting from DISTRICT's active negligence or willful misconduct.

17. Immediately remove, upon written request by DISTRICT's General Manager-Chief Engineer, any improvements and/or equipment not previously approved by DISTRICT, or cease use where CITY has installed any such improvements and/or equipment or CITY has used or allowed use of BRIDGE in a manner which, in the reasonable opinion of DISTRICT's General Manager-Chief Engineer, would be detrimental to the operation of LEVEE. If DISTRICT invokes this provision, it shall be required to communicate a detailed explanation of the basis for its determination that BRIDGE has become detrimental to the operation of

LEVEE in writing to CITY and shall be required to meet and confer with CITY's designated representatives prior to finalizing such opinion.

18. If in the reasonable opinion of the General Manager-Chief Engineer, the public's use of LEVEE RIGHT OF WAY may cause or contribute to a public hazard, a public nuisance, degradation of water quality or any other matter of substantial concern to DISTRICT, DISTRICT reserves the right to require remediation and, if remediation is unsuccessful, to terminate this License Agreement.

19. Indemnify and hold harmless DISTRICT and the County of Riverside (including its directors, officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors, and subcontractors) from any liability whatsoever, based or asserted upon any act or omission of CITY (including its officers, agents, employees, subcontractors, independent contractors, guests and invitees), arising from, related to or in any manner connected with CITY's use and responsibilities in connection therewith of LEVEE RIGHT OF WAY or the condition thereof, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. CITY shall defend, at its sole expense, all costs and fees including but not limited to, attorneys' fees, cost of investigation, liens, defense and settlements or awards, DISTRICT and the County of Riverside (including its directors, officers, Board of Supervisors, elected and appointed officials, agents, employees, representatives, independent contractors, and subcontractors) in any claim or legal action based upon such alleged acts or omissions.

CITY shall not permit to be placed against LEVEE RIGHT OF WAY or any part thereof, any design professionals', mechanics', material man's, contractors' or subcontractors' liens with the regard to CITY's actions upon LEVEE RIGHT OF WAY. CITY agrees to hold DISTRICT and County of Riverside harmless for any loss or expense, including

reasonable attorneys' fee, arising from any such liens which might be filed against LEVEE RIGHT OF WAY.

With respect to any action or claim subject to indemnification herein by CITY, CITY shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of DISTRICT; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CITY's indemnification to DISTRICT and County of Riverside as set forth herein. CITY's obligation hereunder shall be satisfied when CITY has provided to DISTRICT and County of Riverside the appropriate form of dismissal relieving DISTRICT and County of Riverside from any liability for the action or claim involved. The specified insurance limits required in this License shall in no way limit or circumscribe CITY's obligations to indemnify and hold harmless the DISTRICT and County of Riverside herein.

SECTION II

DISTRICT shall:

1. Act as a responsible agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review, comment and approve, as appropriate, IMPROVEMENT PLANS prior to the start of BRIDGE construction.
3. Review, comment and approve, as appropriate on all REGULATORY PERMITS, including any subsequent renewal or amendments thereto, prior to final execution or acceptance by CITY.
4. Upon DISTRICT approval of IMPROVEMENT PLANS and REGULATORY PERMITS, issue an encroachment permit to CITY for the construction, operation and maintenance of BRIDGE in accordance with DISTRICT approved

IMPROVEMENT PLANS and subject to the provisions set forth in DISTRICT's Encroachment Permit.

5. Grant CITY a license to operate and maintain BRIDGE and CITY LEVEE within LEVEE RIGHT OF WAY, provided that CITY's activities do not, in any way whatsoever, unreasonably impair LEVEE's primary flood control purpose and function or otherwise interfere with DISTRICT's ability to operate, maintain, repair or reconstruct LEVEE (beyond CITY LEVEE) or any of its appurtenant works. Said license may be revoked by DISTRICT in the event that said uses unduly compromise LEVEE's primary flood control purpose and function or unreasonably interfere with DISTRICT's ability to operate and maintain LEVEE, as determined in DISTRICT's sole discretion.

6. Provide CITY with written notice of (i) any non-compatible use or condition that is not in conformity with the provisions of this License Agreement, or (ii) any condition which, in the sole opinion of DISTRICT's General Manager-Chief Engineer, could adversely affect the primary flood control function of LEVEE or DISTRICT's ability to operate and maintain LEVEE (beyond CITY LEVEE), and grant CITY ten (10) days from and after such notice to correct any such nonconforming use or condition.

7. Continue to maintain LEVEE's structural integrity (beyond CITY LEVEE), including but not limited to lines and grades, inlets, fencing and ramps to such an extent that LEVEE continues to function as a flood control facility at its design level.

8. Assume no responsibility, obligation, or liability whatsoever, for (i) the design, construction, inspection, operation, repair, and maintenance of BRIDGE and CITY LEVEE, or (ii) public's use of BRIDGE as granted herein, unless done so expressly in writing approved by both parties as an amendment or addendum to this License Agreement.

9. Indemnify and hold harmless CITY (including its City Council, elected and appointed officials, agents, employees, representatives, independent contractors, and subcontractors) from any liability whatsoever, based or asserted upon any act or omission of DISTRICT (including its officers, agents, employees, subcontractors, independent contractors, guests and invitees), arising from, related to or in any manner connected with DISTRICT's use and responsibilities in connection therewith of CITY LEVEE or the condition thereof, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. DISTRICT shall defend, at its sole expense, all costs and fees including but not limited to, attorneys' fees, cost of investigation, liens, defense and settlements or awards, CITY (including its City Council, elected and appointed officials, agents, employees, representatives, independent contractors, and subcontractors) in any claim or legal action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by DISTRICT, DISTRICT shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of CITY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DISTRICT's indemnification to CITY as set forth herein. DISTRICT's obligation hereunder shall be satisfied when DISTRICT has provided to CITY the appropriate form of dismissal relieving CITY from any liability for the action or claim involved.

SECTION III

It is further mutually agreed:

1. DISTRICT reserves the right to terminate this License Agreement without cause and any encroachment permit issued thereto upon sixty (60) days advance written notice

to CITY. DISTRICT also reserves the right to terminate this License Agreement and any encroachment permit issued thereto, if based on any ground permitted under this License Agreement, DISTRICT determines that CITY's or public's use of LEVEE RIGHT OF WAY is not compatible with LEVEE's primary flood control purpose of function.

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

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

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

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

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

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

8. Any and all notices sent or required to be sent to the parties of this License Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Operations and Maintenance Division

CITY OF CATHEDRAL CITY
6800 Avenida Lalo Guerrero
Cathedral City, CA 92235
Attn: John Corella

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

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

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

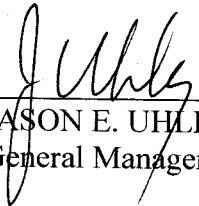
IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on

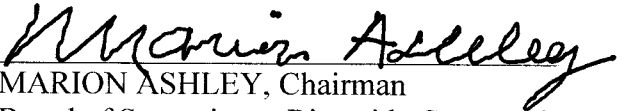
AUG 28 2018

(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By 
JASON E. UHLEY
General Manager-Chief Engineer


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

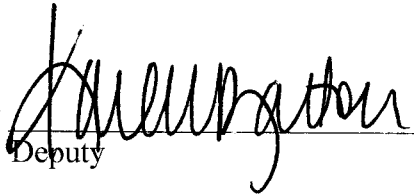
APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER-IHEM
Clerk of the Board

By 
THOMAS OH
Deputy County Counsel

By 
Deputy

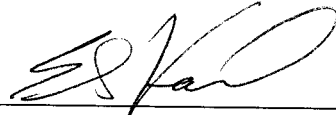
(SEAL)

Whitewater River – Right Bank Levee, Stage 2
Project No. 6-0-00250 (EP No. 3550)
License Agreement w/City of Cathedral City
AMR:blm
06/12/18

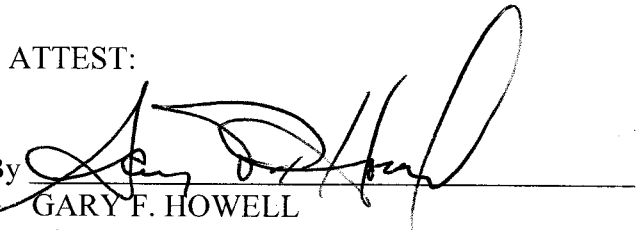
CITY OF CATHEDRAL CITY

By 
CHARLES P. MCCLENDON
City Manager

APPROVED AS TO FORM:

By 
ERIC S. VAIL
City Attorney

ATTEST:

By 
GARY F. HOWELL
City Clerk

(SEAL)

Whitewater River – Right Bank Levee, Stage 2
Project No. 6-0-00250 (EP No. 3550)
License Agreement w/City of Cathedral City
AMR:blm
06/12/18

Exhibit A



LICENSE AGREEMENT

Whitewater River – Right Bank Levee, Stage 2

Project No. 6-0-00250

Encroachment Permit No. 3550

Page 1 of 1

NOTICE OF DETERMINATION

To: **Office of Planning and Research** **Responsible Agency:** **Riverside County Flood Control and Water Conservation District**
 P.O. Box 3044
 Sacramento, CA 95812-3044
 Original Negative Declaration/Notice of Determination was routed to County Clerks for posting on.

Riverside County Clerk
 2724 Gateway Drive
 Riverside, CA 92507

Lead Agency: **City of Cathedral City**
 68700 Avenida Lalo Guerrero
 Cathedral City, CA 92234
 Planning Dept.: 760.770.0380

8/30/18 JP
 Date Initial

Subject: Filing of Notice of Determination in compliance with Section 21152 of the Public Resources Code

State Clearinghouse Number: 2011041037

Project Title: Whitewater River – Right Bank Levee Encroachment Permit and Licensing Agreement

Project Location: The project is located within existing District right of way for Whitewater River – Right Bank Levee where it intersects Cathedral Canyon Drive in Cathedral City. The project can be found in Township 4 South, Range 5 East, Section 28 of the Cathedral City USGS 7.5 Series Topographic Quadrangle map, or at 33° 47' 21.95" N, 116° 27' 59.61" W.

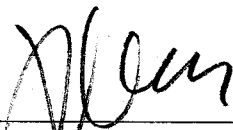
Project Description: The project is a licensing agreement between the Riverside County Flood Control and Water Conservation District (District) and the City of Cathedral City (City). The licensing agreement defines agency responsibilities for construction and maintenance of a 1,065-foot bridge (and auxiliary structures) over the Whitewater River and the District's Whitewater River – Right Bank Levee. The bridge will replace the existing Cathedral Canyon Drive low water crossing and will not conflict with the levee's function.

All construction, inspection, operation and maintenance costs associated with the bridge will be borne by the City. The City will also take over maintenance of a section of levee adjacent to the bridge (City Levee), while the operation and maintenance of the remainder of the levee will continue to be the District's responsibility. The encroachment permit (EP No. 3550 issued in November 2016) and licensing agreement will allow the City to construct, operate and maintain the bridge and auxiliary structures (City Levee) within the District's property.

CEQA Determination: This is to advise that the Riverside County Flood Control and Water Conservation District, acting as a Responsible Agency by issuing an encroachment permit and entering into a licensing agreement for the project, has considered the Mitigated Negative Declaration adopted by the City of Cathedral City on June 8, 2011 and has made the following determinations regarding the project:

1. The District considered the environmental documents as prepared by the City.
2. The project will not have a significant effect on the environment.
3. A Mitigated Negative Declaration was adopted by the Lead Agency pursuant to the provisions of CEQA.
4. Mitigation measures were made a condition of the approval of the project.
5. A mitigation monitoring plan/program was adopted for the project.
6. A Statement of Overriding Considerations was not adopted for this project.
7. Findings were made pursuant to the provisions of CEQA.

Documents Available for Review: This is to certify that the records of this project's approval are available to the general public at: Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.

Lead Agency Signature:  **Date:** 8-14-18
 JOAN VALLE, Senior Flood Control Planner
 Riverside County Flood Control
 and Water Conservation District

AUG 28 2018 11.1

RIVERSIDE COUNTY CLERK-RECORDER

AUTHORIZATION TO BILL

TO BE FILLED OUT BY SUBMITTING AGENCY

DATE: 8/9/2018 BUSINESS UNIT/AGENCY: FLOOD CONTROL - FCARC

ACCOUNTING STRING:

ACCOUNT: 526410 FUND: 40670

DEPT ID: 947160 PROGRAM: _____

AMOUNT: \$50.00

REF:

CDFW Filing Fees CEQA Notice of Determination for WhiteWater River Right Bank Levee Stage 2, Proj No. 138-0-7-03550-00-50-0000-807 MND fee was previously paid on this project (SCH#2011041037). Therefore, please only bill Flood Control for the \$50 filing fee.

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO ISSUE AN INVOICE FOR PAYMENT OF ALL DOCUMENTS INCLUDED.

NUMBER OF DOCUMENTS INCLUDED:

1

AUTHORIZED BY: Karinne Hansen Ext 54330 

PRESENTED BY: Drew Marshall Ext 54643

CONTACT: Joan Valle Ext 58856

TO BE FILLED OUT BY COUNTY CLERK

ACCEPTED BY: _____

DATE: _____

DOCUMENT NO(S)/INVOICE NO(S): _____