

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



ITEM: 11.2
(ID # 14257)

MEETING DATE:
Tuesday, February 02, 2021

FROM: FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of the Cooperative Agreement Between the Riverside County Flood Control and Water Conservation District and the City of Palm Springs for Palm Springs MDP - Line 41, Stage 3, Project No. 6-0-00160-03, Nothing Further is Required Under CEQA, District 4. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that nothing further is required under the California Environmental Quality Act (CEQA) because all potentially significant effects have been adequately analyzed in an earlier Notice of Determination (NOD) approved by this Board on January 12, 2021 [Agenda Item No. 11.7]; and
2. Approve the Cooperative Agreement ("Agreement") between the Riverside County Flood Control and Water Conservation District ("District") and the City of Palm Springs ("City"), and authorize the Chairwoman of the Board to execute the same on behalf of the District; and
3. Direct the Clerk of the Board to return two (2) executed Agreements to the District.

ACTION:

Jason Uhley, GENERAL MGR-CHF FLD CNTRL ENG 1/20/2021

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez, and Hewitt
Nays: None
Absent: None
Date: February 2, 2021
xc: Flood

Kecia R. Harper
Clerk of the Board

By:
Deputy

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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: N/A			Budget Adjustment: N/A	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

This Agreement sets forth the terms and conditions by which the District will design and construct certain flood control facilities within the Palm Springs Master Drainage Plan ("MDP"). These flood control facilities, Palm Springs MDP – Line 41, Stage 3, are intended to reduce flood risk by providing 100-year flood protection for existing and future developments within the MDP Line 41 Federal Emergency Management Agency mapped 100-year floodplain.

The Agreement is needed for the City to grant the District the necessary rights to access, construct, operate and maintain the flood control facilities within City rights of way. In addition, the City has requested and will reimburse the District for additional street improvements.

Upon completion of construction, the District will assume:

- Ownership and responsibility for the operation and maintenance of the mainline storm drain system, which includes approximately 4,900 lineal feet of underground storm drain system, a detention basin, and appurtenant features (e.g., inlet structures; concrete wing walls and retaining walls; concrete spillway; gated intake structure; manholes; maintenance access road; riprap protection and aprons; concrete cutoff walls; gates; fencing; cable railing; impact basin; safety devices; and laterals, connector pipes and storm drains that are greater than thirty-six inches in diameter).
- Responsibility for the interim operation and maintenance of a certain interim earthen channel (Interim Earthen Channel) until the two adjacent parcels (Riverside County Assessor's Parcel Numbers 681-480-003 and 681-480-008) have been fully developed with onsite drainage facilities. Interim Earthen Channel is approximately 1,760 lineal feet of earthen channel along the southern frontage of State Highway 111 (E. Palm Canyon Drive) between Palm Hills Drive and Golf Club Drive.
- Ownership and responsibility for the operation and maintenance of the lateral storm drain ("Cherokee Lateral") located within a District-held easement, subject to the terms and conditions of the Grant of Right of Way between the District and United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, Palm Springs Agency ("BIA"), for, and on behalf of, and with the consent of the underlying landowners ("Grant of Right of Way").

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- Ownership of the various catch basins and connector pipes that are less than thirty-six inches in diameter that are associated with the Cherokee Lateral and located within a District-held easement, subject to the terms and conditions of the Grant of Right of Way.

The City will accept:

- Ownership and responsibility for the operation and maintenance for the flood control facilities' various street improvements; concrete retaining walls and headwalls; curb and gutter; cross gutters; local depressions; concrete aprons; sidewalks; catch basins; and laterals, connector pipes and storm drains that are thirty-six inches or less in diameter that are located within City held easements or rights of way.
- Responsibility for the operation and maintenance various catch basins and connector pipes that are less than thirty-six inches in diameter that are associated with the Cherokee Lateral and located within a District-held easement, subject to the terms and conditions of the Grant of Right of Way.

The Agreement also sets forth the necessary terms and conditions by which the District and City will address the Casey's June Beetle compensatory mitigation land requirements for Palm Springs MDP - Line 41, Stage 3 and existing District flood control infrastructure protecting the city of Palm Springs. Both Palm Springs MDP - Line 41, Stage 3 and the maintenance of existing flood control infrastructure will impact the Casey's June Beetle, a federally listed endangered species, and its designated critical habitat. Since providing the necessary mitigation land for Palm Springs MDP - Line 41, Stage 3 will exhaust the majority of District-owned real property within Casey's June Beetle habitat, the City will reserve suitable City-owned land as the necessary Casey's June Beetle compensatory mitigation land for the long-term maintenance, repair and restoration of existing District flood control infrastructure protecting the city of Palm Springs.

County Counsel has approved the Agreement as to legal form. The City approved the Agreement on January 14, 2021.

Prev. Agn. Ref.: 11.4 of 03/14/06
11.3 of 04/25/06
11.5 of 07/15/08
11.6 of 09/16/08
MT#9224 11.1 of 03/26/19
MT#9339 11.2 of 03/26/19
MT#14256 11.7 of 01/12/21

Environmental Findings

Pursuant to CEQA, a Notice of Determination (NOD) (SCH#2006021010) was prepared and filed following the Board's approval on January 12, 2021 [Agenda Item No. 11.7] to purchase Right of Way (ROW) and for the additional discretionary actions that the Board would need to

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take in regards to the entire Project (PS 41). Additionally, approval and execution of this Agreement and other similar actions related to the Project will not introduce new impacts and will not trigger any of the criteria described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent mitigated negative declaration or environmental impact report. Therefore, nothing further is required under CEQA.

Impact on Residents and Businesses

These flood control facilities are funded by ad valorem property tax revenue and entail no new fees, taxes or bonded indebtedness to residents and businesses. Upon construction completion, these flood control facilities will (i) provide drainage and street improvements for adjacent property owners and businesses and (ii) reduce or eliminate the existing FEMA floodplain affecting residential and commercial properties and various streets within the area.

Additional Fiscal Information

The engineer's estimate for the construction of Palm Springs MDP Line 41, Stage 3 is estimated at \$11 million; however, the final amount of the construction contract will be determined by competitive bidding through the California Public Works Contract Process. The District is funding all design, construction and its construction inspection costs for the flood control facilities. The City will reimburse the District for street improvements. The District will ensure sufficient funding is secured for the project prior to construction contract award by the Board of Supervisors. Future operations and maintenance costs associated with the District-maintained flood control facilities will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Cooperative Agreement

RKM:blm
P8/235988



Scott Bruekner 1/25/2021



Gregory V. Priamos, Director County Counsel 1/21/2021



Cynthia M. Guarez, Chief Deputy County Counsel 1/20/2021

WHEN DOCUMENT IS FULLY EXECUTED RETURN

CLERK'S COPY

Riverside County Clerk of the Board, Stop 1010

Post Office Box 1147, Riverside, Ca 92502-1147

Thank you.

COOPERATIVE AGREEMENT
 Palm Springs MDP - Line 41, Stage 3
 Project No. 6-0-00160-03

This Cooperative Agreement ("Agreement"), dated as of February 2, 2021, is entered into by and between the Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT") and the City of Palm Springs, a California charter city and municipal corporation ("CITY"). Sometimes hereinafter, DISTRICT and CITY may be referred to individually as a "Party" or collectively as the "Parties". The Parties hereto agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct the Palm Springs Master Drainage Plan - Line 41, Stage 3 ("STAGE 3") to provide flood control and drainage improvements for the immediate adjacent areas within CITY; and

B. STAGE 3 is identified in DISTRICT's Palm Springs Master Drainage Plan ("MDP"); and

C. STAGE 3, as shown on DISTRICT Drawing No. 6-0343 and as shown in concept in blue on Exhibit "A" attached hereto and made a part hereof, consists of the following:

i. "MAINLINE"

Approximately 4,900 lineal feet of underground storm drain system. At its downstream terminus, MAINLINE will connect to DISTRICT's existing Palm Springs MDP - Line 41, Stage 2 ("STAGE 2") near Golf Club Drive. STAGE 2 is shown in concept in red dashed line on Exhibit "A"; and

ii. Detention Basin ("BASIN")

An approximately 6.5-acre detention basin; and

iii. Cherokee Way Lateral ("CHEROKEE LATERAL")

Approximately 300 lineal feet of underground storm drain system to be constructed within a portion of Cherokee Way. At its downstream terminus, CHEROKEE LATERAL will connect to MAINLINE. CHEROKEE LATERAL is shown in concept in pink on Exhibit "A"; and

iv. Cherokee Lateral Appurtenances ("LATERAL APPURTENANCES")

Various catch basins and connector pipes that are less than thirty-six inches (36") in diameter that are associated with CHEROKEE LATERAL and located within a DISTRICT-held easement; and

v. District Appurtenances ("DISTRICT APPURTENANT FEATURES")

Various inlet structures; concrete wing walls and retaining walls; concrete spillway, gated intake structure; manholes; maintenance access road; riprap protection and aprons; concrete cutoff walls; gates, fencing, and cable railing; impact basin; safety devices and laterals, connector pipes and storm drains that are greater than thirty-six inches (36") in diameter. CHEROKEE LATERAL and LATERAL APPURTENANCES are not included in DISTRICT APPURTENANT FEATURES; and

D. Associated with the construction of STAGE 3 is approximately 1,760 lineal feet of interim earthen channel along the southern frontage of State Highway 111 (E. Palm Canyon Drive) between Palm Hills Drive and Golf Club Drive, and associated concrete check dams, drop inlets, concrete aprons, and riprap ("INTERIM EARTHEN CHANNEL"), as shown in concept in yellow on Exhibit "A".

E. Altogether, MAINLINE, BASIN, DISTRICT APPURTENANT FEATURES and INTERIM EARTHEN CHANNEL are hereinafter called "DISTRICT FACILITIES"; and

F. Associated with the construction of DISTRICT FACILITIES is the construction of concrete retaining walls and headwalls; various curb and gutter; cross gutters; local depressions; concrete aprons; sidewalks; catch basins and laterals, connector pipes and storm drains that are thirty-six inches (36") or less in diameter located within CITY held easements or rights of way, hereinafter called "CITY APPURTENANCES"; and

G. CITY desires DISTRICT to include certain street improvements, such as additional street grinding and asphalt overlay ("STREET PAVING"), as shown in concept in green on Exhibit "B" attached hereto and made a part hereof, as a part of its construction contract. STREET PAVING limits shown on Exhibit "B" are preliminary and will be adjusted to three feet beyond the top of any trench sidewall or beyond any undermined asphalt caused by construction; and

H. CITY is willing to reimburse DISTRICT for one hundred percent (100%) of the lowest responsible construction contract bid price for STREET PAVING ("INITIAL PAYMENT") plus any cost associated with STREET PAVING items resulting from contract change orders ("PAVING CHANGE ORDERS"). Together, INITIAL PAYMENT and PAVING CHANGE ORDERS are collectively referred to as "CITY CONTRIBUTION"; and

I. DISTRICT is willing to incorporate STREET PAVING into its public works construction contract. Therefore, DISTRICT is willing to prepare, or cause to be prepared, the necessary restoration plans and specifications for STREET PAVING ("PAVING PLANS") located within CITY rights of way; and

J. CITY is willing to review and approve PAVING PLANS; and

K. Altogether, CITY APPURTENANCES and STREET PAVING are hereinafter called "CITY FACILITIES"; and

L. DISTRICT FACILITIES, CHEROKEE LATERAL, LATERAL APPURTENANCES and CITY FACILITIES are hereinafter altogether called "PROJECT"; and

M. Portions of PROJECT will impact the Casey's June Beetle ("CJB"), a federally listed endangered species, and its designated critical habitat; and

N. The United States Fish and Wildlife Service issued its biological opinion for PROJECT, which includes requirements for DISTRICT to mitigate for impacts to CJB through a variety of means, including, but not limited to, placing the following two DISTRICT-owned parcels, which are within CJB habitat, under a permanent conservation easement or permanent deed restriction:

- i. "PARCEL A", Riverside County Assessor's Parcel Number 510-300-002 (DISTRICT's Parcel Number 6040-28), an approximately 13.4 acre parcel in the Palm Canyon Wash. PARCEL A is shown in concept diagonally hatched in purple on Exhibit "C" attached hereto and made a part hereof; and
- ii. "PARCEL B", an approximately 26.6 acre parcel, which is a portion of Riverside County Assessor's Parcel Number 510-290-005 (DISTRICT's Parcel Number 6040-10). PARCEL B is shown in concept cross-hatched in teal on Exhibit "C"; and
- iii. Altogether, PARCEL A and PARCEL B are hereinafter called "DISTRICT MITIGATION PARCELS"; and

O. DISTRICT MITIGATION PARCELS, totaling approximately 40 acres, currently comprise the majority of DISTRICT-owned real property within CJB habitat; and

P. DISTRICT owns, operates and maintains a number of critical flood control facilities, which are located within or adjacent to the city of Palm Springs, that protect a significant area of

the city of Palm Springs ("EXISTING PS FACILITIES"). Portions of EXISTING PS FACILITIES are located within CJB habitat. DISTRICT will likely be required to mitigate for impacts to CJB habitat as part of DISTRICT's long-term maintenance, repair and restoration of EXISTING PS FACILITIES; and

Q. Since the commitment of DISTRICT MITIGATION PARCELS as CJB compensatory mitigation land for PROJECT will effectively preclude DISTRICT from providing similar compensatory mitigation for the long-term maintenance, repair, and restoration of said EXISTING PS FACILITIES, CITY agrees to provide approximately 40 acres of CITY-owned land that is located, partially or wholly, within suitable CJB habitat as the necessary CJB compensatory mitigation land for the operation, repair and maintenance of EXISTING PS FACILITIES; and

R. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

S. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to (i) the design, construction, inspection, ownership, operation and maintenance of PROJECT and (ii) the CJB compensatory mitigation responsibilities for PROJECT and future operation, repair and maintenance EXISTING PS FACILITIES.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

SECTION I – DISTRICT Responsibilities

DISTRICT shall:

1. Pursuant to the California Environmental Quality Act ("CEQA"), act as the Lead Agency and assume responsibility for the preparation, circulation and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation and maintenance of PROJECT.
2. Prepare, or cause to be prepared, plans and specifications for PROJECT ("IMPROVEMENT PLANS") in accordance with applicable DISTRICT and CITY standards.
3. Obtain, at its sole cost and expense, all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT.
4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or agreements required by any federal, state or local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.
5. Prior to advertising PROJECT for public works construction contract bids, submit IMPROVEMENT PLANS to CITY for its review, comment and approval, as appropriate.
6. Advertise, award and administer a public works construction contract for PROJECT.
7. Provide CITY with written notice that DISTRICT has awarded a construction contract for PROJECT. The written notice to CITY shall include the estimated cost for STREET PAVING based upon the estimated quantities of materials removed and installed at the contract unit price.
8. Within thirty (30) days of DISTRICT awarding PROJECT construction contract, pay Coachella Valley Conservation Commission the costs associated with the Multiple Species Habitat Conservation Plan, which is either the lesser of three percent (3%) of the lowest bid price or three percent (3%) of the contract bid price, less the value of the project specific mitigation, if applicable to offset the 3% cost.

9. Prior to commencing PROJECT construction, schedule and conduct a pre-construction meeting between DISTRICT, CITY and other affected entities. DISTRICT shall notify CITY prior to conducting the pre-construction meeting.

10. Furnish CITY, at the time of the pre-construction meeting, with a construction schedule which shall show the order and dates in which DISTRICT or DISTRICT's contractor proposes to carry on the various parts of work, including estimated start and completion dates.

11. Not permit any change to, or modification of CITY- and DISTRICT-approved PAVING PLANS without the prior written permission and consent of CITY.

12. Grant CITY, by execution of this Agreement, the right to enter upon DISTRICT's property where necessary and convenient for the purpose of gaining access to, and performing inspection service for, the construction of CITY FACILITIES as set forth herein.

13. Construct or cause to be constructed PROJECT pursuant to a DISTRICT administered public works construction contract, in accordance with DISTRICT- and CITY-approved IMPROVEMENT PLANS.

14. Inspect or cause to be inspected construction of PROJECT.

15. Require its construction contractor(s) to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for all DISTRICT and CITY employees on the site.

16. Require its construction contractor(s) to include CITY as an additional insured under the liability insurance coverage for PROJECT, and also require its construction contractor(s) to include CITY as a third-party beneficiary of any and all warranties of the contractor's work with regard to CITY FACILITIES.

17. Within two (2) weeks of completing PROJECT construction, provide CITY with written notice that PROJECT construction is substantially complete and request that CITY conduct a final inspection of CITY FACILITIES and LATERAL APPURTENANCES.

18. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with a copy of DISTRICT's Notice of Completion.

19. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with a duplicate copy of "record drawings" of IMPROVEMENT PLANS.

20. Upon DISTRICT's acceptance of PROJECT construction as complete, assume ownership and sole responsibility for the operation and maintenance of DISTRICT FACILITIES, at which time CITY then accept ownership and responsibility for operation and maintenance of CITY FACILITIES.

21. Keep an accurate accounting of all STREET PAVING construction costs and include this final accounting when invoicing CITY for CITY CONTRIBUTION. The final accounting of construction costs shall include a detailed breakdown of the actual quantities of materials removed and installed at the contract unit price, CITY-approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction.

22. Invoice CITY (Attention: Marcus Fuller) for CITY CONTRIBUTION at the time of providing a copy of DISTRICT's Notice of Completion pursuant to Section I.18.).

23. Ensure that all work performed pursuant to this Agreement by DISTRICT, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to all applicable provisions of the Labor Code, Business and Professions Code, and Water Code. DISTRICT shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II - CITY Responsibilities

CITY 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 and at its sole cost, IMPROVEMENT PLANS prior to DISTRICT's advertising PROJECT for construction bids.
3. Grant DISTRICT, by execution of this Agreement, all rights necessary to construct, inspect, operate and maintain PROJECT within CITY rights of way or easements.
4. Issue, at no cost to DISTRICT or DISTRICT's contractor, the necessary encroachment permit(s) required to construct PROJECT.
5. In coordination with DISTRICT's utility coordinator, order the relocation of all utilities installed by permit or franchise within CITY rights of way that conflict with the construction of PROJECT and which must be relocated at the utility company's expense.
6. Order the relocation of all CITY owned sewer lines within CITY rights of way which:
(i) were not identified prior to the start of PROJECT construction, (ii) conflict with the construction of PROJECT and (iii) must be relocated at CITY's expense.
7. Inspect construction of CITY FACILITIES and LATERAL APPURTENANCES for quality control purposes at its sole cost, but provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DISTRICT's contractor(s) during the construction of PROJECT.
8. Upon receipt of DISTRICT's written notice that PROJECT construction is substantially complete as set forth in Section I.17, conduct a final inspection of CITY FACILITIES and LATERAL APPURTENANCES.

9. Accept ownership and sole responsibility for the operation and maintenance of CITY FACILITIES upon (i) receipt of DISTRICT's Notice of Completion as set forth in Section I.18; and (ii) receipt of a duplicate copy of "record drawings" of IMPROVEMENT PLANS as set forth in Section I.19.

10. Pay DISTRICT, within thirty (30) days after receipt of DISTRICT'S appropriate invoice, for CITY CONTRIBUTION as set forth in Section I.22.

11. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way and jurisdiction which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION III – CJB Mitigation

1. "CITY MITIGATION LAND" means CITY-owned land located within suitable CJB habitat that is committed by CITY as the necessary CJB compensatory mitigation land for the operation, repair and maintenance of EXISTING PS FACILITIES. CITY MITIGATION LAND shall be (i) proposed to the applicable regulatory agencies at the appropriate time as sufficient to mitigate impacts to CJB habitat caused by the operation, repair, and maintenance of EXISTING PS FACILITIES and (ii) derived from CITY-owned parcels identified in orange in Exhibit "D" attached hereto and made a part hereof.

2. DISTRICT shall:

- a. Fund and comply with the mitigation requirements of PROJECT at its sole cost and expense, including the obligation of DISTRICT MITIGATION PARCELS

as compensatory mitigation for impacted CJB habitat as set forth in Recital N above.

- b. Coordinate with CITY prior to proposing any specific CITY-owned parcels to regulatory agencies as CJB compensatory mitigation land for the operation, repair and maintenance of EXISTING PS FACILITIES and ensure that DISTRICT's mitigation requirements will not conflict with existing CITY maintenance obligations.
 - c. Fund and comply with mitigation requirements of applicable regulatory agencies after CITY has conveyed a conservation easement, or equivalent as required by the applicable regulatory agencies, over CITY MITIGATION LAND, or portions thereof, and shall incur no liability or cost thereafter with respect to existing CITY maintenance obligations of CITY MITIGATION LAND.
3. CITY shall:
- a. Coordinate with DISTRICT to confirm and reserve approximately 40-acres of specific existing CITY-owned parcels, or portions thereof, as CITY MITIGATION LAND.
 - b. Take appropriate steps to reserve CITY MITIGATION LAND to ensure the identified parcels, or applicable portions thereof, remains unencumbered and available to provide for mitigation for the operation, repair, and maintenance of EXISTING PS FACILITIES.
 - c. At no cost to DISTRICT, convey a conservation easement, or equivalent as required by the applicable regulatory agencies, over CITY MITIGATION LAND or portions thereof, to satisfy the mitigation of impacts to CJB habitat

from the operation, repair, and maintenance of EXISTING PS FACILITIES, and shall incur no further liability or cost thereafter with respect to mitigation requirements of CITY MITIGATION LAND, or portions thereof, except for the existing CITY maintenance obligations.

4. It is further mutually understood that should the mitigation requirements for the operation, repair, and maintenance of EXISTING PS FACILITIES exceed 40 acres, CITY and DISTRICT will collaborate to seek acquisition of additional suitable lands.

SECTION IV – PROJECT Limits Within Allotment No. 118E

1. CHEROKEE LATERAL and LATERAL APPURTENANCES are located within Allotment No. 118E within the boundary of the Agua Caliente Indian Reservation.
2. The United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, Palm Springs Agency ("BIA"), for, and on behalf of, and with the consent of the underlying landowners ("LANDOWNERS"), has granted DISTRICT a non-exclusive right-of-way easement in connection with PROJECT through a Grant of Right-of-Way dated June 17, 2020 ("GRANT OF ROW"). GRANT OF ROW is attached hereto as Exhibit "E" and made a part hereof.
3. Upon DISTRICT's acceptance of PROJECT construction as complete, DISTRICT shall:
 - a. Assume ownership and sole responsibility for the operation and maintenance of CHEROKEE LATERAL, subject to the terms and conditions of GRANT OF ROW.
 - b. Assume ownership of LATERAL APPURTENANCES, subject to the terms and conditions of GRANT OF ROW.
4. CITY shall:

- a. Accept sole responsibility for the operation and maintenance of LATERAL APPURTENANCES, subject to the terms and conditions of GRANT OF ROW and, if applicable, the consent of BIA and LANDOWNERS, upon (i) receipt of DISTRICT's Notice of Completion as set forth in Section I.18; and (ii) receipt of a duplicate copy of "record drawings" of IMPROVEMENT PLANS.
- b. Notify DISTRICT at least thirty (30) days prior to any ground disturbing maintenance activities.

SECTION V – Mutual Provisions

It is further mutually agreed:

1. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT, and shall not be deemed complete until approved and accepted as complete by DISTRICT.
2. Except as otherwise provided herein, DISTRICT shall not be responsible for any additional street repairs or improvements not shown in IMPROVEMENT PLANS not as a result of PROJECT construction.
3. In the event CITY desires to include any additional work as part of PROJECT, CITY shall submit a written request to DISTRICT describing the additional work desired and agrees to pay DISTRICT for any agreed upon work requested. Payment for CITY-requested additional work shall be based upon actual quantities of materials installed at the contract unit prices bid or at the negotiated change order prices.
4. DISTRICT and CITY each pledge to cooperate in regard to the operation and maintenance of their respective facilities as set forth herein, and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facilities.

5. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

6. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of Riverside (including its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

7. Any waiver by DISTRICT or by CITY of any breach of any one or more of the terms of this 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 Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from enforcement hereof.

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

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

To DISTRICT:
 RIVERSIDE COUNTY FLOOD CONTROL
 AND WATER CONSERVATION DISTRICT
 1995 Market Street
 Riverside, CA 92501
 Attn: Design and Construction Division

To CITY:
 CITY OF PALM SPRINGS
 3200 E. Tahquitz Canyon Way
 Palm Springs, CA 92262
 Attn: City Manager
 c: City Engineer

10. If any provision in this 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.

11. DISTRICT and CITY shall not assign this Agreement without the written consent of the other party.

12. 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 the 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.

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

14. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other person or entity shall have any right or action based upon the provisions of this Agreement.

15. This 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 and written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the Parties hereto.

16. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ((“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The Parties further agree that the electronic signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to CUETA as amended from time to time. CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of “electronic signature” as defined in subdivision (i) of Section 1633.2 of the Civil Code.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on

February 2, 2021
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By [Signature]
JASON E. UHLEY
General Manager-Chief Engineer

By [Signature]
KAREN SPIEGEL, Chairwoman
Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA HARPER
Clerk of the Board

By [Signature]
Synthia M. Gunzel
Chief Deputy County Counsel

By [Signature]
Deputy

(SEAL)




Cooperative Agreement with City of Palm Springs
Palm Springs MDP - Line 41, Stage 3
Project No. 6-0-00160-03
11/17/2020
RKM:blm


CITY OF PALM SPRINGS

By 
DAVID H. READY
City Manager

APPROVED AS TO FORM:

By 
JEFFREY BALLINGER
City Attorney

ATTEST:

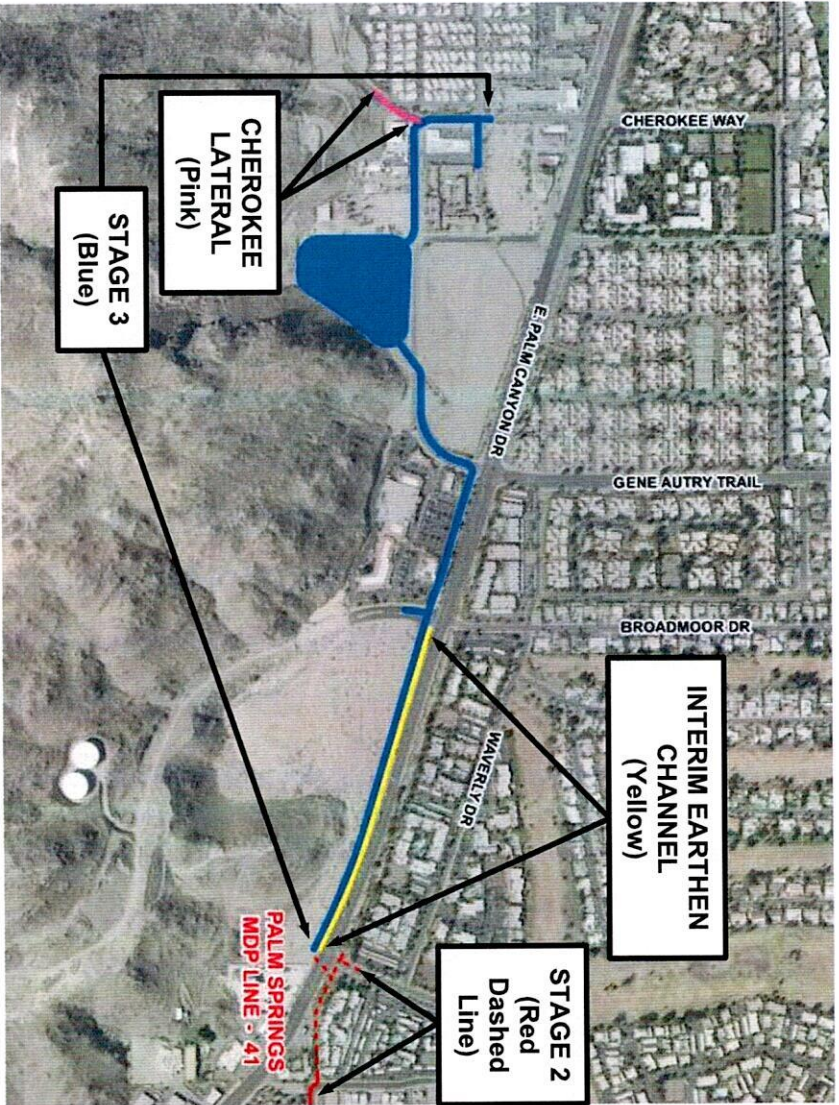
By 
ANTHONY J. MEJIA
City Clerk

(SEAL)

APPROVED BY CITY COUNCIL
A8669 1/14/2021

Cooperative Agreement with City of Palm Springs
Palm Springs MDP - Line 41, Stage 3
Project No. 6-0-00160-03
11/17/2020
RKM:blm

Exhibit A



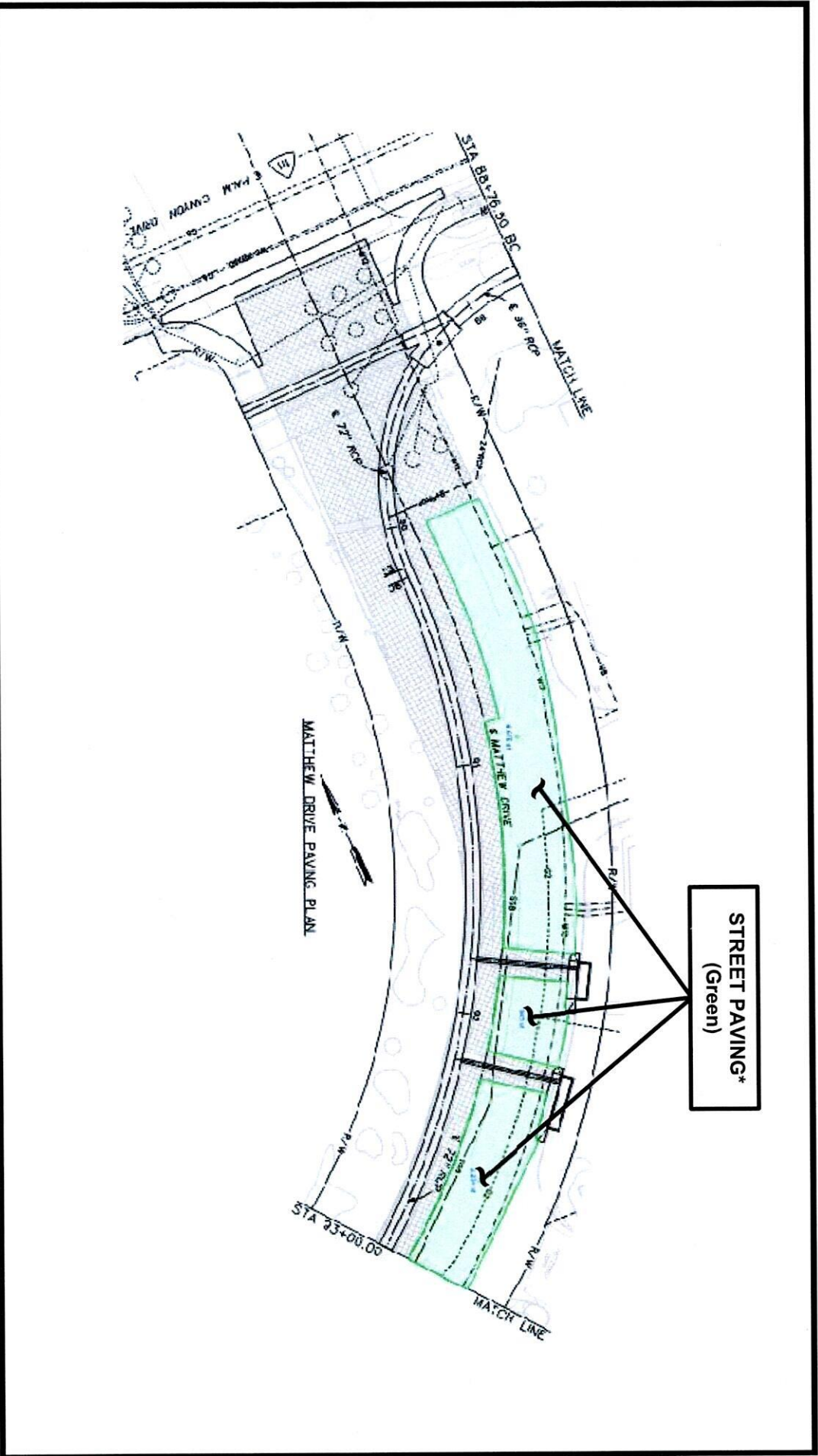
COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 1 of 1

Exhibit B



* - STREET PAVING limits are preliminary and will be adjusted to three feet beyond the top of any trench sidewall or beyond any undermined asphalt caused by construction.

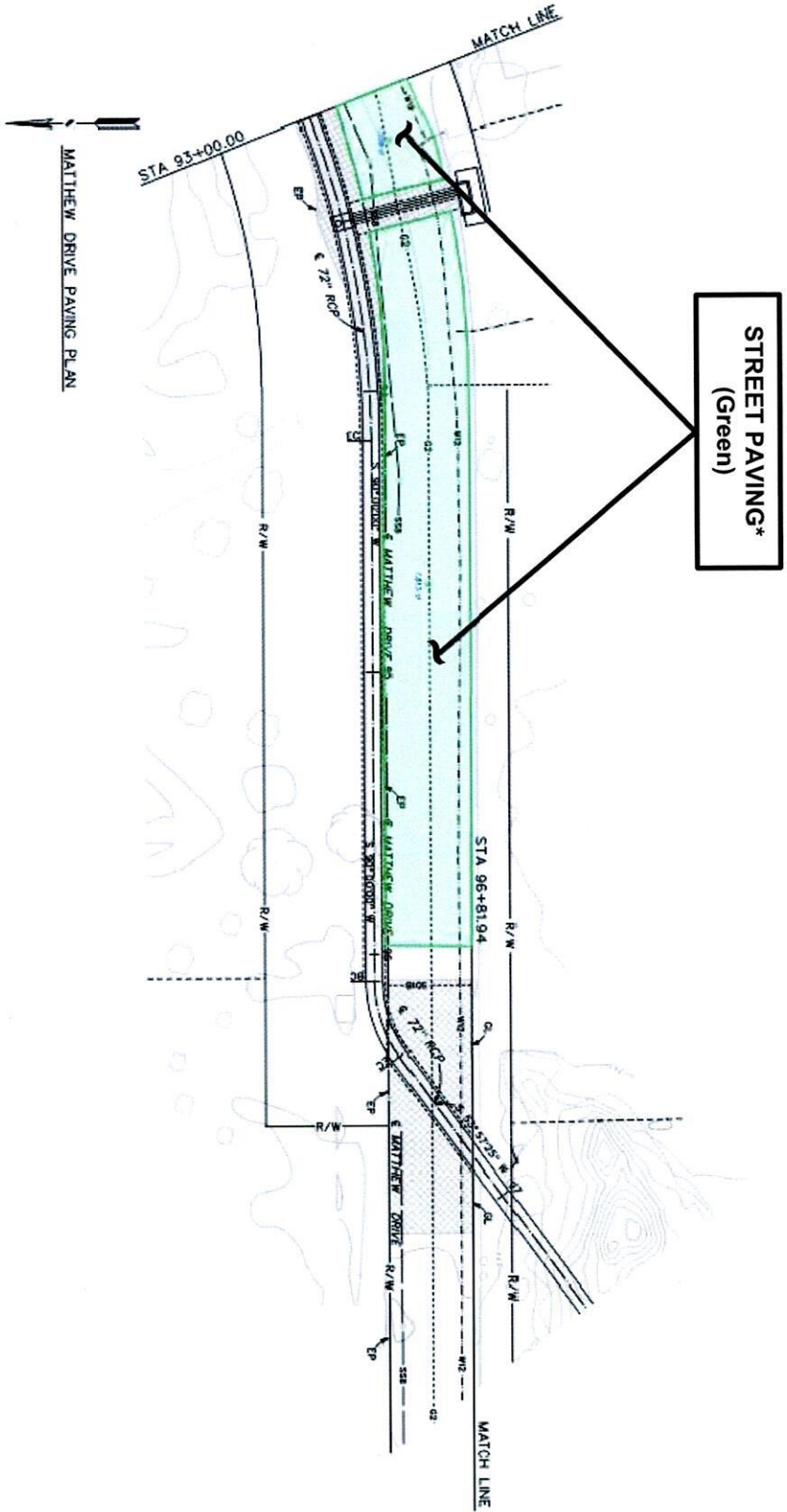
COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 1 of 4

Exhibit B



* - STREET PAVING limits are preliminary and will be adjusted to three feet beyond the top of any trench sidewall or beyond any undermined asphalt caused by construction.

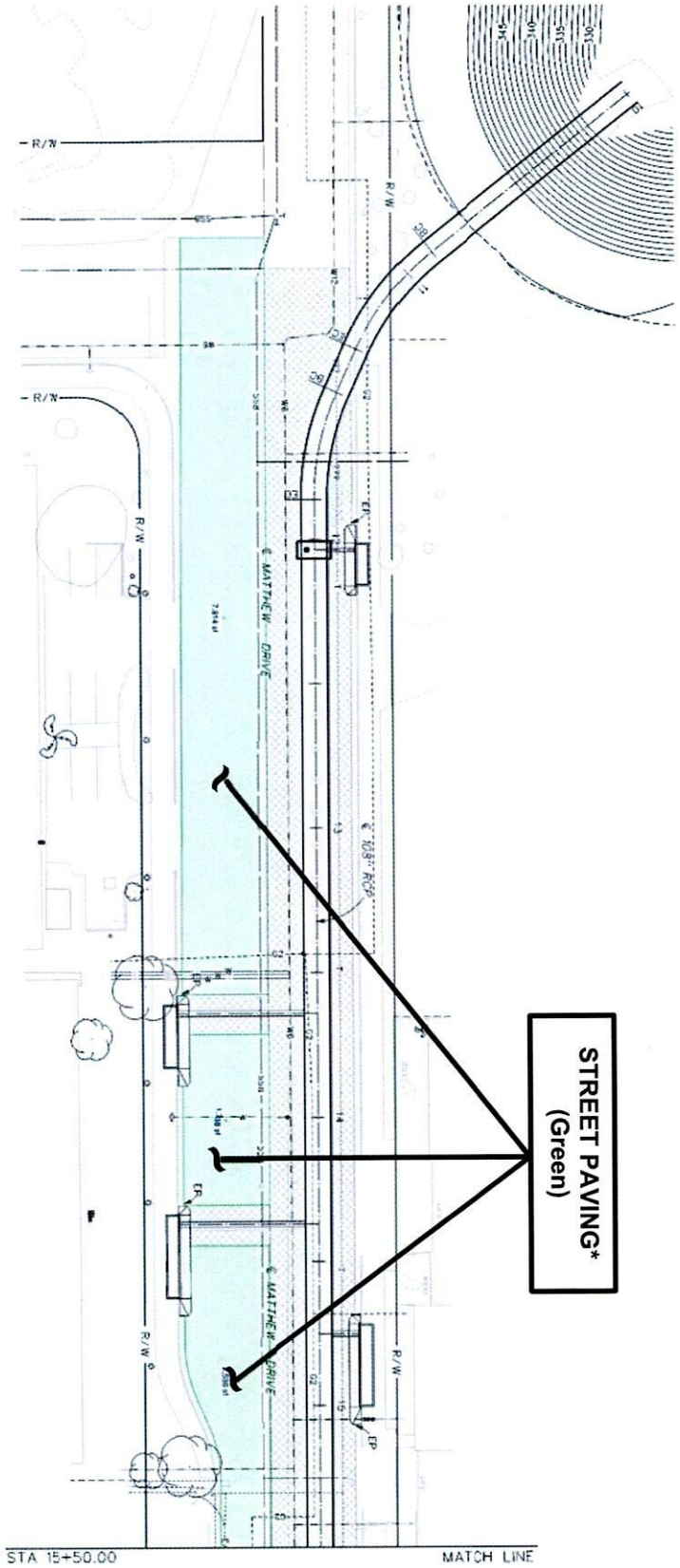
COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 2 of 4

Exhibit B



* - STREET PAVING limits are preliminary and will be adjusted to three feet beyond the top of any trench sidewalk or beyond any undermined asphalt caused by construction.

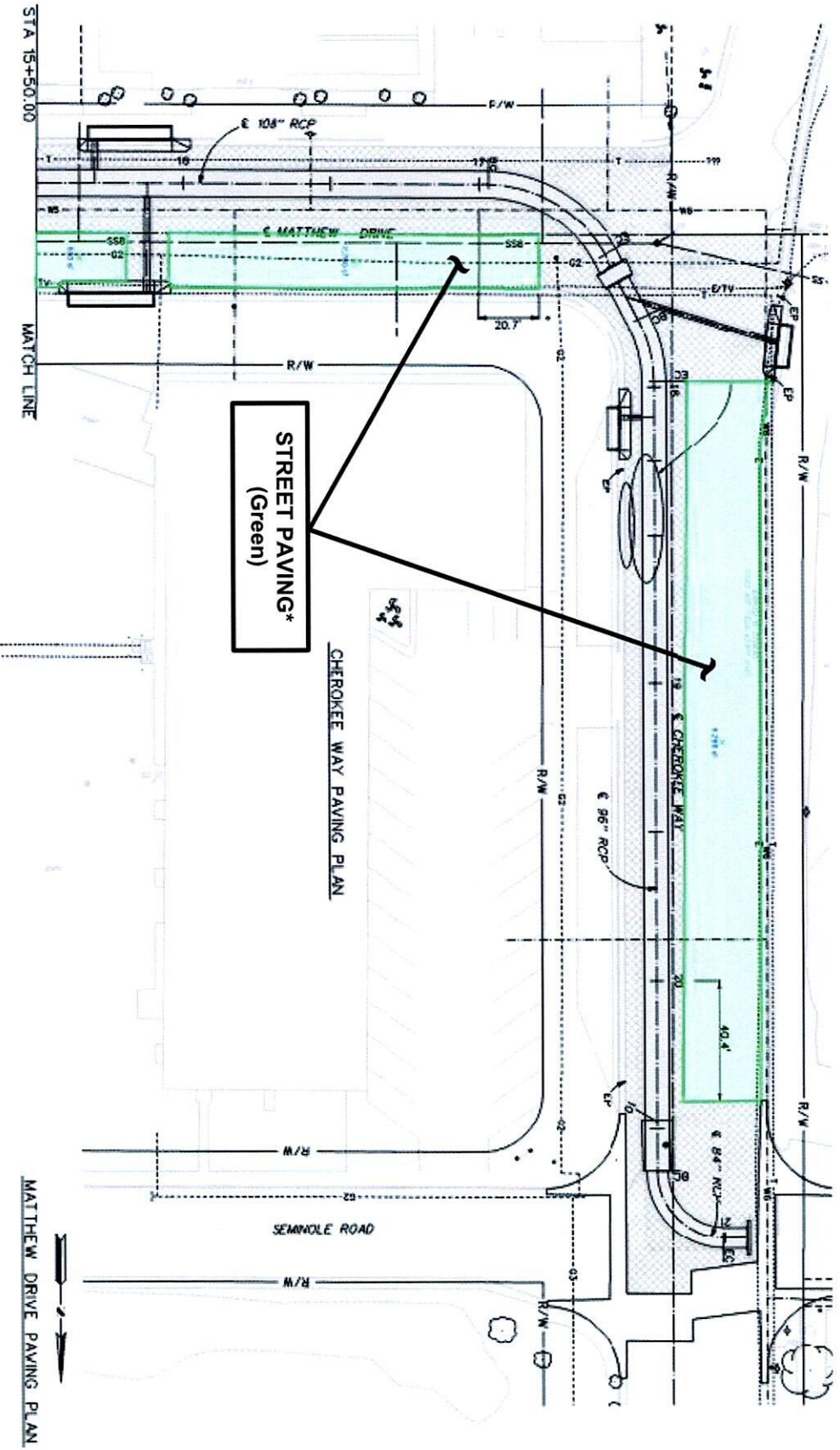
COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 3 of 4

Exhibit B



* - STREET PAVING limits are preliminary and will be adjusted to three feet beyond the top of any trench sidewall or beyond any undermined asphalt caused by construction.

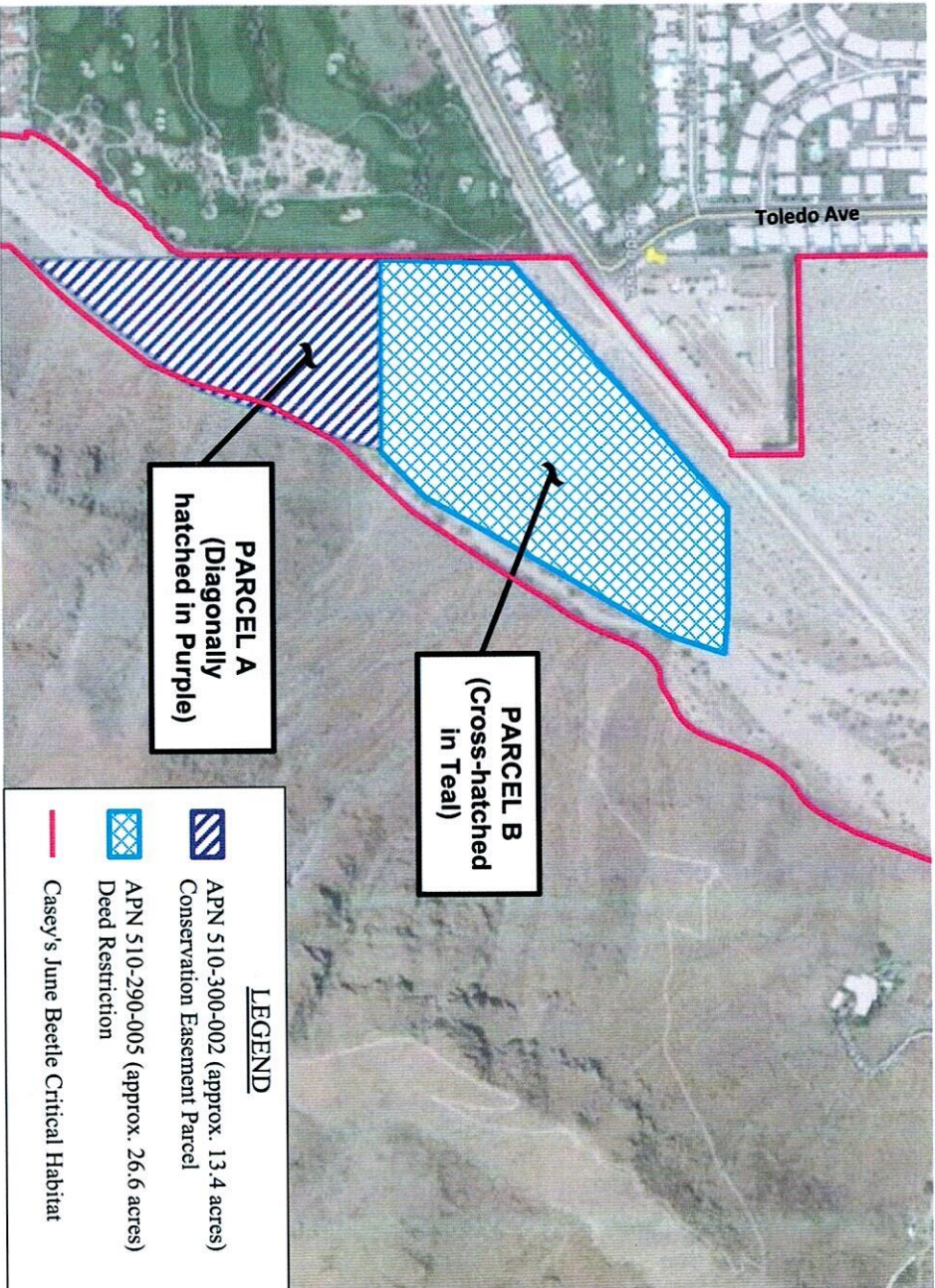
COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 4 of 4

Exhibit C



COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 1 of 1

Exhibit D

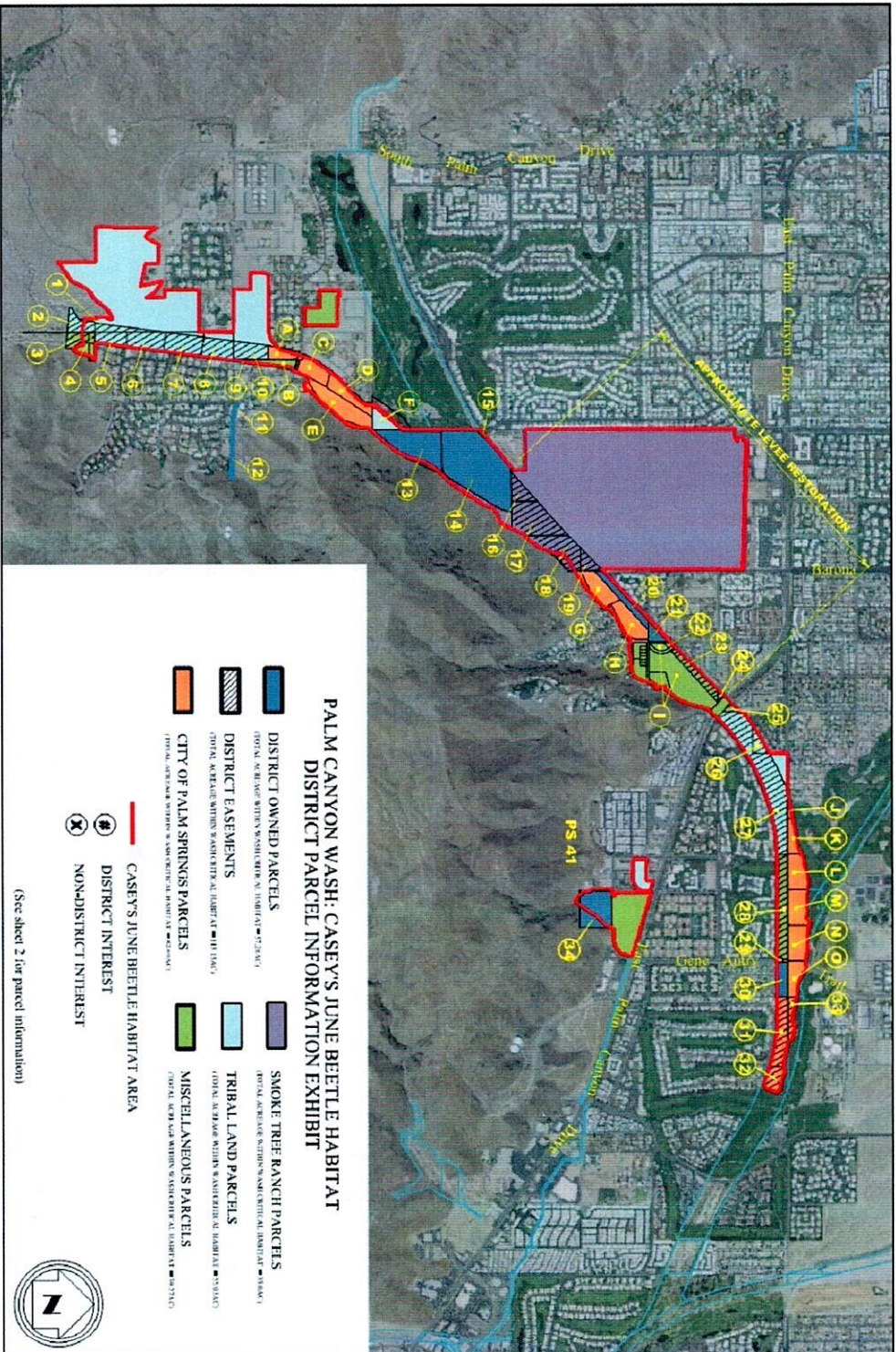


Exhibit D

PALM CANYON WASH POTENTIAL CASEY'S JUNE BEETLE MITIGATION AREAS

ID#	APN	Owner	Estimated Conservation Average Available
31	681-210-009	City of Palm Springs	4.15
32	681-250-012	City of Palm Springs	2.50
33	680-180-009	City of Palm Springs	1.60
D	512-340-029	City of Palm Springs	3.25
E	512-190-027	City of Palm Springs	3.55
G	510-210-003	City of Palm Springs	0.42
H	510-210-002	City of Palm Springs	4.40
L	680 020 034	City of Palm Springs	5.12
M	680-020-026	City of Palm Springs	5.62
N	680-020-028	City of Palm Springs	5.79
O	680-020-070	City of Palm Springs	2.15
Total:			38.55

COOPERATIVE AGREEMENT

Palm Springs MDP - Line 41, Stage 3

Project No. 6-0-00160-03

Page 2 of 2

Exhibit E

Grant of Right-of-Way

[see attached behind this page]

Recording Requested By:

AGUA CALIENTE
LTRO
RECEIVED
2020 JUN 24 PM 4: 33

When Recorded, Mail To:



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PALM SPRINGS AGENCY**

**Allotment No. 118E
SECTION 30, T4S, R5E
R/W FILE No. 379-087**

GRANT OF RIGHT-OF-WAY

The United States of America, acting by and through the Bureau of Indian Affairs, Department of the Interior, Palm Springs Agency, P.O. Box 2245, Palm Springs, California 92263 (“**BIA**” or “**GRANTOR**”), for, and on behalf of, and with the consent of Sara A Rice, Steven A Rice Katrina E Rice & Jessika V Rice-Isidoro (“**LANDOWNERS**”), members or affiliated with the AGUA CALIENTE BAND OF CAHUILLA INDIANS, a federally recognized Indian Tribe (“**TRIBE**”), consistent with and under authority contained and under the Act of February 5, 1948 (62 Stat. 17; 25 USC §§ 323-328); and Part 169, Title 25, Code of Federal Regulations, which by reference are made a part hereof, does hereby grant to: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (RCFC) (“**GRANTEE**”), a body politic, its successors and assigns, located at 1995 Market Street, Riverside, California 92501 the following right-of-way, as that term is defined in 25 CFR 169.2.

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1. GRANT.

GRANTOR does hereby grant to GRANTEE, a non-exclusive right-of-way easement in connection with a public works project generally known as the Palm Springs MDP 41 Stage 3

("Project") in, on, over, upon, across, under, and through that certain portion of GRANTOR's real property situated within the Agua Caliente Indian Reservation including the right of ingress and egress for the specific purpose of Construction, Operation and Maintenance of Flood Control and Drainage Facilities.

This right-of-way easement is limited to the lands more particularly described in **Exhibit A** and depicted in **Exhibit B**, which are attached hereto and incorporated herein by this reference (the "**Easement Area**"), and is subject to all existing licenses, easements, leases, encumbrances, and claims of title affecting the Easement Area that pre-exist this Grant.

NON-PERMITTED USES OR RESTRICTIONS:

- a. Installation of any other public improvements, utilities, services or "piggy-backing" usage is not permitted, without a separate approved grant of right-of-way (25 CFR 169.127).

2. TERM.

- a. The term of this Grant shall commence on the date BIA approves this Grant ("**Effective Date**") and expire June 20, 2044 as per the term of Lease PSL-93. ("**Initial Term**"), subject to earlier termination or cancellation as set forth herein.
- b. Notwithstanding the foregoing, LANDOWNER may terminate this Grant as a negotiated remedy identified in Section 15 (25 CFR 169.403) upon the occurrence of any one of the following events (collectively, the "**Termination Events**" and singularly a "**Termination Event**"):
 - i. GRANTEE's failure to comply with any term or condition of this Grant, or any applicable governing laws and/or regulations as set forth in Section 19 below, and GRANTEE's failure to cure the violation within thirty (30) calendar days of the date of written notice of said violation.
 - ii. GRANTEE's abandonment or non-use of the Easement Area for any consecutive two-year period (for the purpose for which it was granted). See Item 10 on Page 8, regarding GRANTEE's proposed initial construction schedule that falls outside this time period.
 - iii. GRANTEE's failure, upon completion of new construction, to file with the Grantor an Affidavit of Completion pursuant to 25 CFR 169.16.
- c. Alternatively, BIA may cancel this Grant if it deems it inappropriate to defer to the negotiated remedy set forth herein if BIA provides GRANTEE written notice of a violation of the conditions of the grant (25 CFR 169.404) and GRANTEE fails to cure the violation within ten (10) business days of receipt of said notice (i.e., for non-

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payment violations) or fails to provide proof of payment (i.e., for payment violations) (25 CFR 169.405).

3. **MITIGATION MEASURES** (25 CFR 169.123). GRANTEE agrees to comply with any applicable mitigation measures or conditions described to protect environmental, biological, and cultural resources within the Easement Area as defined in the environmental compliance documentation.
4. **RESERVATION OF JURISDICTION** (25 CFR 169.10, 169.125). Even though LANDOWNER has provided the requisite consent for this Grant, BIA approval is conditioned on the understanding that the right-of-way easement contemplated herein is a non-possessory interest in land, and title does not pass to GRANTEE.
5. **LAWS** (25 CFR 169.9). GRANTEE shall comply with all applicable federal and Tribal laws and/or regulations.
6. **REGULATORY PROVISIONS** (25 CFR 169.125).
 - a. BIA and LANDOWNER has the right to reasonable access to the Easement Area to determine GRANTEE's compliance with conditions of this Grant or to protect public health and safety;
 - b. GRANTEE has no right to any of the products or resources of the Easement Area, including but not limited to, timber, forage, mineral, and animal resources, unless otherwise provided for in this Grant;
 - c. BIA may treat any provision of this Grant that violates applicable federal and Tribal laws and/or regulations as a violation of this Grant;
 - d. If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Grant, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the GRANTEE shall contact BIA and TRIBE to determine how to proceed and appropriate mitigating measures or disposition.
 - e. GRANTEE shall:
 - i. Construct and maintain the Permanent Improvements (defined above) within the Easement Area in a professional manner consistent with industry standards;
 - ii. Pay promptly all damages and compensation determined by BIA to be due to LANDOWNER and authorized users and occupants of the Easement Area as a result of the grading, construction, and maintenance of the Easement Area;

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- iii. Perform grading, construction, and maintenance of the Easement Area in a manner that does not damage LANDOWNER's property;
- iv. Restore the Easement Area as nearly as may be possible to its original condition, upon the completion of construction, to the extent compatible with the purpose for which the right-of-way was granted, or reclaim the Easement Area if agreed to by LANDOWNER;
- v. Clear and keep clear the Easement Area, to the extent compatible with the purposes of this Grant, and dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project;
- vi. Comply with all applicable Federal and Tribal laws and/or regulations and obtain all required permits;
- vii. Not commit waste;
- viii. Operate, repair, and maintain the Permanent Improvements consistent with this Grant;
- ix. Except as provided in Section 9 below, restore the Easement Area to its original condition, to the maximum extent reasonably possible, upon cancellation or termination of this Grant; or reclaim the Easement Area if agreed to by LANDOWNER;
- x. At all times keep BIA informed of the GRANTEE's address;
- xi. Refrain from interfering with the LANDOWNER's use of the Easement Area, provided that LANDOWNER's use of the Easement Area is not inconsistent with this Grant;
- xii. Notify BIA and LANDOWNER if GRANTEE files for bankruptcy or is placed in receivership.
- xiii. Agrees to take soil and resources conservation and protection measures, including weed control, on the land covered by the right-of-way.
- xiv. Shall to do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.
- xv. Shall build and repair such roads, fences and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right of way.

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This easement is subject to any prior valid existing right or adverse claim, so long as said easement shall be actually used for the purpose above specified; and PROVIDED, that this right-of-way may be terminable in whole or in part by the Grantor for any of the following causes (25 CFR 169.401);

- a. Any abandonment, for a nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted. However, this stipulation does not apply to the time period pertaining to the GRANTEE's proposed initial construction schedule. See Item 10 on Page 8.
- b. Violation of the right-of-way grant or right-of-way document, including but not limited to encroachments beyond the defined boundaries,
- c. Accidental, willful, and/or incidental trespass,
- d. Unauthorized new construction,
- e. Changes in use not permitted in the grant,
- f. Late or insufficient payment may result in enforcement actions including, but not limited to, cancellation of the grant.

A cancellation involving a right-of-way grant will not be effective until 31 days after the Grantee receives a cancellation letter from the BIA, or 41 days from the date the letter was mailed letter, whichever is earlier (25 CFR 169.409);

Or the BIA may cancel this Grant if it deems it inappropriate to defer to any negotiated remedy set forth herein, if BIA provides GRANTEE written notice of a violation of the conditions of the grant (25 CFR 169.404) and GRANTEE fails to cure the violation within ten (10) business days of receipt of said notice (i.e., for other than payment violations) or fails to provide proof of payment (i.e., for payment violations) (25 CFR 169.405). The notice of violation (for other than payment) may order the Grantee to cease operations under the right-of-way grant.

7. **INDEMNIFICATION, HOLD HARMLESS** (25 CFR 169.125). To the fullest extent permitted by law, GRANTEE shall indemnify and hold harmless the United States, LANDOWNER, TRIBE and their respective officials, directors, officers, employees, and agents from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with GRANTEE's use or occupation of the Easement Area described and/or depicted herein and GRANTEE's use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the Easement Area that occurs during the term of this Grant. Liabilities subject to the duties to indemnify and hold harmless include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorney's fees; court costs; and costs of alternative dispute resolution.

GRANTEE agrees to indemnify the LANDOWNER and authorized user and occupants against any liability of loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

8. **ENCROACHMENT** (25 CFR 169.128). GRANTEE may not unreasonably withhold its consent for a new right-of-way within the Easement Area that does not interfere with the use or purpose of its right-of-way easement.

9. **PERMANENT IMPROVEMENTS** (25 CFR 169.130).

a. GRANTEE shall be the owner of any permanent improvements GRANTEE installs, places, or constructs in, on, over, under, upon, above, along, and across the Easement Area during the Term, and said permanent improvements, appurtenances fixtures and equipment placed (the "**Permanent Improvements**") shall remain in, on, over, under, above, along, and across the Easement Area during the Term. Notwithstanding Section 6(e)(ix), upon the expiration or earlier termination/cancellation of this Grant, all Permanent Improvements shall become the sole property of LANDOWNER (subject to subpart "c" below).

b. If, prior to the expiration or termination/cancellation of this Grant, GRANTEE decides to remove the Permanent Improvements, GRANTEE shall restore the Easement Area to as closely as reasonably possible to its condition prior to construction of the Permanent Improvements. The time frame for the removal of the Permanent Improvements must be mutually agreed upon by the BIA, LANDOWNER AND GRANTEE, but shall not exceed one (1) year after the expiration of this Grant. GRANTEE shall provide LANDOWNER and BIA notice of any removal within one (1) month of removal. The Permanent Improvements shall remain the property of GRANTEE upon their removal from the Easement Area.

If the Permanent Improvements are not removed within the time frame specified herein, LANDOWNER may take possession of and title to the Permanent Improvements resulting in the Permanent Improvements becoming the property of LANDOWNER.

c. Not less than two (2) years prior to the expiration of this Grant GRANTEE shall provide LANDOWNER and BIA written notice of GRANTEE's intention to take the Permanent Improvements out of service and abandon in place, and the Permanent Improvements are in a condition satisfactory to LANDOWNER, the Permanent Improvements shall become the property of LANDOWNER, upon LANDOWNER's formal written acceptance.

If the Permanent Improvements are not in a condition satisfactory to LANDOWNER the GRANTEE, at GRANTEE's expense, shall retain the services of a qualified

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engineer/contractor approved by LANDOWNER to inspect the Permanent Improvements subject to this Grant. As part of the services, the qualified engineer/contractor shall prepare a report that evaluates the following with respect to the Permanent Improvements:

- (i) the compliance with existing regulatory requirements;
- (ii) the adequacy of current maintenance, rehabilitation, and replacement plans as they relate to the Permanent Improvements;
- (iii) the location of any defect that may cause deficiencies in the Permanent Improvements; and
- (iv) any other issue that LANDOWNER and GRANTEE wish to include in the engineer/contractor's report (the "**Material Deficiency Report**"). Upon completion of the Material Deficiency Report, GRANTEE shall provide LANDOWNER and BIA a copy of the Report and meet and confer with LANDOWNER and BIA to discuss any material deficiencies identified therein.

For purposes of this Grant, a "**material deficiency**" means a specific issue with the Permanent Improvements that:

- (i) is reasonably likely to result in damage to or impair the use of adjacent property, buildings, or structures;
- (ii) is reasonably likely to impair GRANTEE's ability to use the Permanent Improvements for its intended purpose; or
- (iii) poses an unreasonable risk to the health and safety of individuals.

If there is a material deficiency identified in the Material Deficiency Report and GRANTEE fails or is unable to correct the material deficiency, within six (6) months of the date of written notice from LANDOWNER, GRANTEE shall remove the Permanent Improvements at GRANTEE's expense, and restore the Easement Area to as closely as reasonably possible to its condition prior to construction of the Permanent Improvements. The Permanent Improvements shall remain the property of the GRANTEE upon their removal from the Easement Area.

If the materially deficient Permanent Improvements are not removed within the time frame specified herein, LANDOWNER may either take possession of and title to the Permanent Improvements resulting in the Permanent Improvements becoming the property of LANDOWNER or, have the Permanent Improvements removed and GRANTEE shall reimburse the LANDOWNER for the cost of the removal and restoration of the Easement Area, to its condition prior to the construction of the Permanent Improvements.

- d. If the GRANTEE desires a new Grant of Right-Of-Way at the termination of this Grant, within one (1) year of the effective date of expiration or termination, GRANTEE shall provide LANDOWNER and BIA written notice of GRANTEE's intention to renew or

apply for a new Grant, subject to all conditions in force and compensation relative to the subsequent easement.

During the new Grant of Right-Of-Way application process, LANDOWNER and GRANTEE may enter into a temporary operation and maintenance agreement (the "**Operations Agreement**") prior to the approval of the new Grant that, among other things:

- (i) requires that GRANTEE provide certain operation and maintenance services identified in the Operations Agreement related to the Permanent Improvements (the "**Services**") in accordance with applicable federal, State, and Tribal laws;
- (ii) establishes a definite, term for GRANTEE's access to the easement area;
- (iii) provides reasonable compensation for GRANTEE's use and access of the easement area;
- (iv) grants GRANTEE a temporary revocable license to enter into the location of the Permanent Improvements to provide easement maintenance services and to ensure the continuity of the flood control function and becomes effective no sooner than the expiration of this Grant;
- (v) Nothing set forth herein shall obligate GRANTOR, GRANTEE, or LANDOWNER to enter into the Operations Agreement or be construed to grant GRANTEE an ownership interest in the Permanent Improvements upon the expiration of this Grant.

10. DUE DILIGENCE (25 CFR 169.105). If Permanent Improvements are to be constructed, GRANTEE anticipates that during years one (1) and two (2) the preparatory planning and permits will commence, but that the construction of said Improvements is expected to commence no later than year three (3) from the Effective Date. If construction of the Permanent Improvements does not occur, or is not expected to be completed within the time period specified herein, GRANTEE shall provide LANDOWNER and BIA with an explanation of good cause as to the nature of any delay, the anticipated date of construction of the Permanent Improvements, and evidence of progress toward completion of construction. Failure of GRANTEE to comply with this due diligence requirement is a violation of this Grant and may lead to cancellation of this Grant pursuant to 25 CFR 169.405 and 169.408.

11. AMENDMENT. This Grant may not be amended except as provided in 25 CFR 169.204 - 169.206.

12. ASSIGNMENT (25 CFR 169.207). This Grant may not be assigned without the consent of the LANDOWNER and BIA approval.

13. MORTGAGE (25 CFR 169.210). This Grant may not be mortgaged without the consent of the LANDOWNER and BIA approval.

- 14. EFFECTIVE DATE** (25 CFR 169.301). This Grant will be effective on the date it is approved by the BIA.
- 15. NEGOTIATED REMEDY** (25 CFR 169.403). As a negotiated remedy, LANDOWNER shall have the right to terminate this Grant during the Term for any Termination Event as set forth in Section 2 above, and in accordance with 25 CFR 169.403.
- 16. BINDING EFFECT.** The condition for this Grant shall extend to and be binding upon and shall inure to the benefit of the successors of the GRANTEE.
- 17. SURVIVAL.** Notwithstanding anything contained in this Grant to the contrary or the expiration or earlier termination/cancellation of this Grant, any and all rights and obligations of LANDOWNER, GRANTOR, or GRANTEE set forth in Section 7 and Section 9, or any and all rights and obligations of LANDOWNER, GRANTOR, or GRANTEE which expressly or by implication survive the expiration or earlier termination/cancellation of this Grant, shall survive the expiration or earlier termination/cancellation of this Grant.
- 18. GOVERNING LAW.** Unless otherwise stated herein, this Grant shall be governed exclusively by the provisions hereof and by the laws of the United States, and if there is no applicable federal law, then by the applicable laws of the Agua Caliente Band of Cahuilla Indians.
- 19. ADDITIONAL CONDITIONS OR RESTRICTIONS.** This Grant incorporates by reference the conditions or restrictions set out in the GRANTOR's consents, attached hereto.

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IN WITNESS WHEREOF, GRANTOR has executed this Grant of easement this 17th day of June, 2020.

UNITED STATES OF AMERICA
The Secretary of the Interior



Ollie Beyal, Superintendent

Pursuant to the authority delegated by
209 DM 8, 230 DM 1, and 3 IAM 4 and
Sacramento Re-delegation Order No. 1
(43 F.R. 30131, dated July 13, 1978)

U.S. Department of the Interior
Bureau of Indian Affairs
Palm Springs Agency
P.O. Box 2245
Palm Springs, CA 92263

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Page 10 of 10

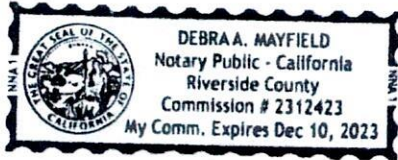
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Riverside }
On June 17, 2020 before me, Debra A. Mayfield, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Ollie Beyal
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

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

WITNESS my hand and official seal.

Signature Debra A. Mayfield
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: ROW 110E

Document Date: Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:
[] Corporate Officer - Title(s):
[] Partner - [] Limited [] General
[] Individual [] Attorney in Fact
[] Trustee [] Guardian of Conservator
[] Other:
Signer is Representing:

584 2013Y20

RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

EXHIBIT "A"

LEGAL DESCRIPTION

PALM SPRINGS LINE 41

Parcel No. 6160-19

In the City of Palm Springs, County of Riverside, State of California, being that portion of the south half of the northeast quarter of the southwest quarter of Section 30, Township 4 South, Range 5 East, San Bernardino Meridian, described as follows;

Beginning at the northeast corner of said south half;

Thence South $00^{\circ}10'24''$ West 37.46 feet along the easterly line of said south half to a non-tangent curve concave southeasterly having a radius of 12.00 feet, a radial line to said curve bears North $02^{\circ}34'46''$ West;

Thence westerly, southwesterly, and southerly along said curve 15.34 feet through a central angle of $73^{\circ}15'37''$;

Thence South $13^{\circ}52'22''$ West 18.09 feet to a non-tangent curve concave northwesterly having a radius of 325.00 feet, a radial line to said curve bears South $72^{\circ}43'35''$ East;

Thence southerly and southwesterly along said curve 87.99 feet through a central angle of $15^{\circ}30'46''$;

Thence South $57^{\circ}31'32''$ East 4.72 feet;

Thence South $38^{\circ}52'27''$ West 123.74 feet;

Thence North $45^{\circ}55'12''$ West 43.39 feet;

Thence North $39^{\circ}16'58''$ East 95.79 feet to a non-tangent curve concave westerly having a radius of 235.00 feet, a radial line to said curve bears South $51^{\circ}24'35''$ East;

Thence northeasterly and northerly along said curve 150.01 feet through a central angle of $36^{\circ}34'27''$ to the northerly line of said south half;

Thence South $89^{\circ}43'50''$ East 45.68 feet along said northerly line to the **Point of Beginning**.

Containing 10,987 square feet / 0.252 acres more or less.

584 2013Y20

RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT

The distances shown herein are in grid. Ground distances may be obtained by dividing grid distance by the combination factor of 0.99997411.

See Exhibit "B" attached hereto and made a part hereof.





JAMES R. McNEILL

Land Surveyor No. 7752

Date: 7-18-17

584 2013Y20

EXHIBIT "B"

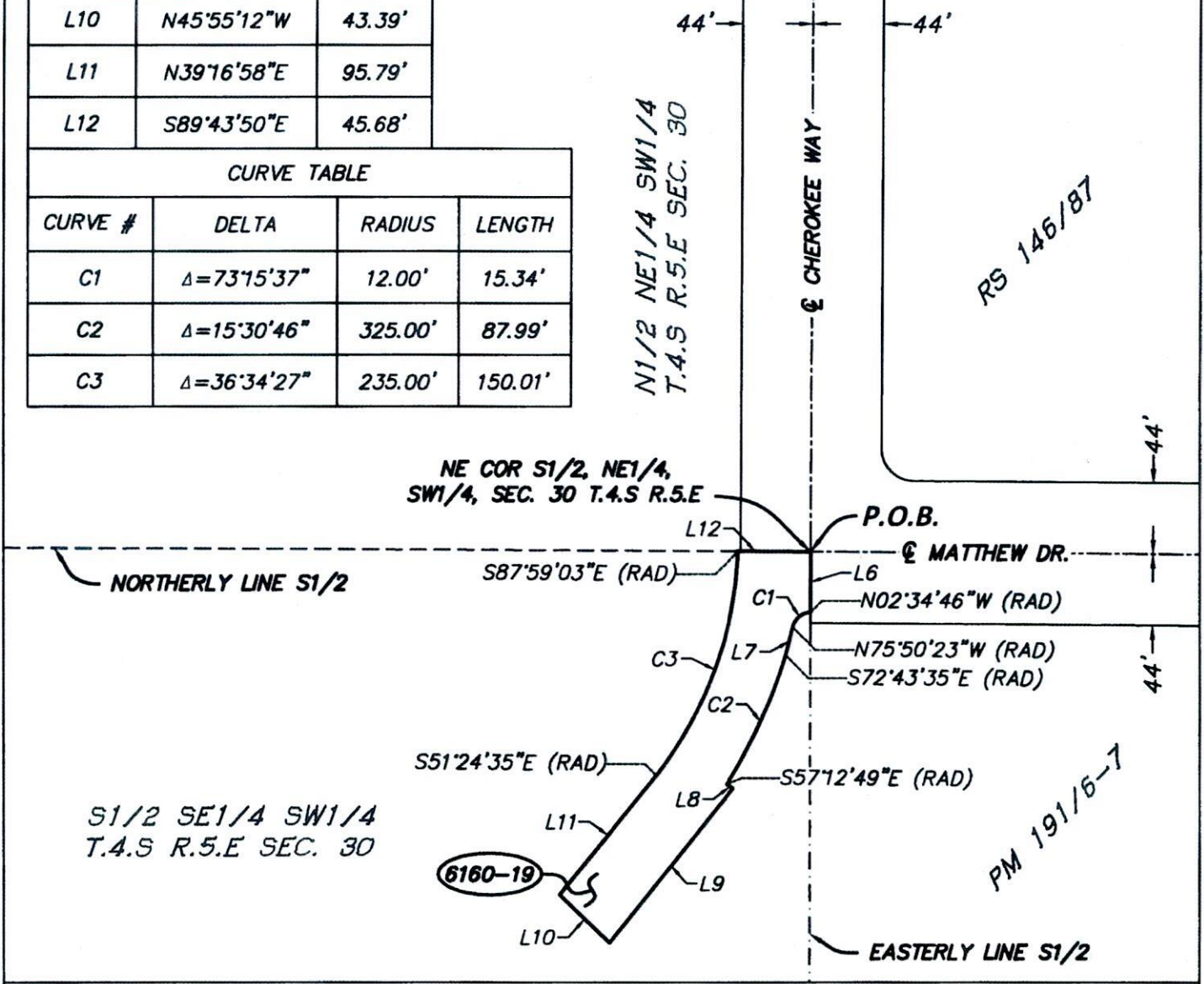
INST NO.
2010-0429423



GRAPHIC SCALE
0' 100'
1 INCH = 100 FEET

LINE TABLE		
LINE #	DIRECTION	LENGTH
L6	S00°10'24"W	37.46'
L7	S13°52'22"W	18.09'
L8	S57°31'32"E	4.72'
L9	S38°52'27"W	123.74'
L10	N45°55'12"W	43.39'
L11	N39°16'58"E	95.79'
L12	S89°43'50"E	45.68'

CURVE TABLE			
CURVE #	DELTA	RADIUS	LENGTH
C1	$\Delta=73^{\circ}15'37''$	12.00'	15.34'
C2	$\Delta=15^{\circ}30'46''$	325.00'	87.99'
C3	$\Delta=36^{\circ}34'27''$	235.00'	150.01'



584 2013Y20

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
1995 MARKET STREET, RIVERSIDE, CA. 92501

PROJECT NAME:	PALM SPRINGS LINE 41	SCALE 1"=100'	DRAWN BY SB
RCFC-WCD PARCEL NUMBER(S):	6160-19	DATE 9/9/2019	CHECK BY DC
RCFC-WCD PROJECT NUMBER:	COOPERATIVE AGREEMENT Palm Springs Line 41, Stage Project No. 6-0-00160-03	SHEET NO. 1 OF 1	