



City Council Staff Report

DATE: September 3, 2014

CONSENT CALENDAR

SUBJECT: APPROVE AN AGREEMENT FOR DONATION OF ARTWORK BETWEEN THE CITY OF PALM SPRINGS AND THE AGUA CALIENTE BAND OF CAHUILLA INDIANS FOR THE SCULPTURE TITLED "YOUNG BASKETMAKER" BY ARTIST DOUG HYDE VALUED AT \$410,000 TO BE PLACED IN THE TAHQUITZ CANYON WAY MEDIAN WEST OF SUNRISE WAY IN ACCORDANCE WITH THE SECTION 14 MASTER DEVELOPMENT PLAN, AS RECOMMENDED BY THE PUBLIC ARTS COMMISSION

FROM: David H. Ready, City Manager

BY: Community and Economic Development

SUMMARY

The Section 14 Master Plan was approved by the Tribe and adopted by City Council in March, 2004. A requirement of the Section 14 Master Plan calls for Type II Gateway Elements at entrances of key major arterials to help define of Section 14 as a unique district. The first Type II Gateway was installed at Tahquitz Canyon Way and Indian Canyon Drive in 1994, placement of the second Type II Gateway Element will be located in the center median of Tahquitz Canyon Way west of Sunrise Way. The Tribe has commissioned and paid for the sculpture "Young Basketmaker" by artist Doug Hyde to be placed at this and is proposing to donate this sculpture to the City.

RECOMMENDATION:

1. Approve a Gift Agreement for Donation of Artwork between the City of Palm Springs and the Agua Caliente Band of Cahuilla Indians ("Tribe"), for the sculpture "Young Basketmaker" in a form acceptable to the City Attorney.
2. Approve the recommendation to install the donated sculpture "Young Basketmaker" in the center median of Tahquitz Canyon Way west of Sunrise Way in accordance with the Section 14 Master Plan.
3. Authorize City Manager to execute all necessary documents.

STAFF ANALYSIS:

The Section 14 Type I and II Gateway Elements are a requirement of the Section 14 Master Plan which was approved by the Tribe and adopted by the City Council in March 2004. Type I Gateway sculptures will be placed at each of the four corners of Section 14 and signify entry into the district. The Type II Gateway sculptures are large-scale works to be located on Tahquitz Canyon Way at the intersections of Indian Canyon Drive and Sunrise Way. The Tribe proposed that they assume the cost of developing a design for these features, in collaboration with the Public Arts Commission and Indian Planning Commission. This approach would ensure the uniformity and appropriateness of the Type I and II Gateway features. During the design process Tribal Planning Staff submitted design ideas for the Gateway sculptures to the Public Arts Commission and then to Tribal Council. Subsequently, Tribal Council approved the design and commissioning of artist Doug Hyde to create the Section 14 Gateway sculptures.

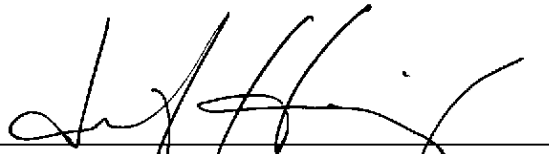
The first Type II Gateway sculpture, "Cahuilla Women" by artist Doug Hyde, located at Tahquitz Canyon Way and Indian Canyon Drive was approved by the Public Arts Commission in 1992 and installed in 1994. At the April 2009 Public Arts Commission meeting Tribal Planning Staff submitted design ideas for the second Type II Gateway sculpture also by artist Doug Hyde to be placed at Tahquitz Canyon Way and Sunrise Way. At that time no action was requested of the Commission and the presentation was for informational purposes.

As work neared completion on the Tahquitz Canyon Way Median Landscaping Improvements project Tribal Planning Staff made a presentation at the July 10, 2014 Public Arts Commission meeting to donate the sculpture titled "Young Basketmaker" by Doug Hyde. The work, fabricated in bronze is 12'x8'x6.5' in size and will be installed on the Tahquitz median west of Sunrise Way. At the meeting, a motion was made by Commissioner Edmundson and seconded by Commissioner West to recommend approval of the proposal as presented and drafted in the resolution. The motion passed unanimously on a 7/0 vote.


Tribal Planning staff and City staff have worked together to develop artwork that meets the requirements set forth in Public Arts Ordinance Section 3.37.090, Criteria for Artwork Selection and the Section 14 Master Plan. Since the Tribe does not have a public art program in place or the appropriate resources to maintain public artwork, they are proposing to donate the Type II Gateway Element to the City and that it become part of the City's Public Art Collection. The placement of the Type II Element is in accordance with the procedure for Placement and Donation of Artwork.

FISCAL IMPACT:

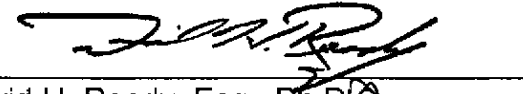
The Tribe will be responsible for the cost of the sculpture installation, landscaping, and lighting. Maintenance costs are estimated to be approximately \$3,000 per year and will be paid from the public arts fund, 150-4408-50015. No General Fund money will be used for this project.



Jennifer Henning
Arts and Special Projects Coordinator



John Raymond,
Director, Community and Economic
Development



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

1. Images of site and artwork
2. April 2009 Type II Gateway Presentation
3. Public Arts Commission Resolution Approving the Installation of the Type II Gateway Element and Accepting the Donation of the Sculpture as Part of the City's Public Art Collection
4. Agreement for Transfer of Artwork Ownership between the Agua Caliente Band of Cahuilla Indians and the City of Palm Springs



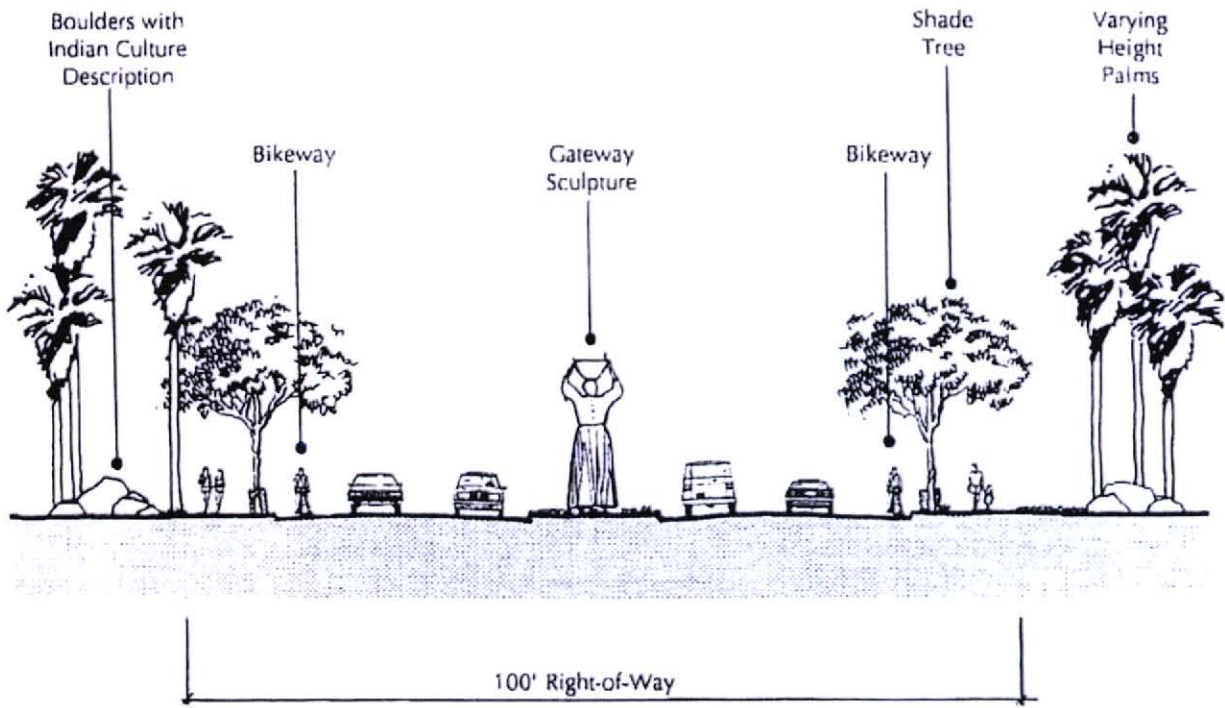


TRIBAL PLANNING & DEVELOPMENT

Section 14 Master Plan Type 2 Gateway Element Presentation
to the
Palm Springs Public Arts Commission

April 9, 2009

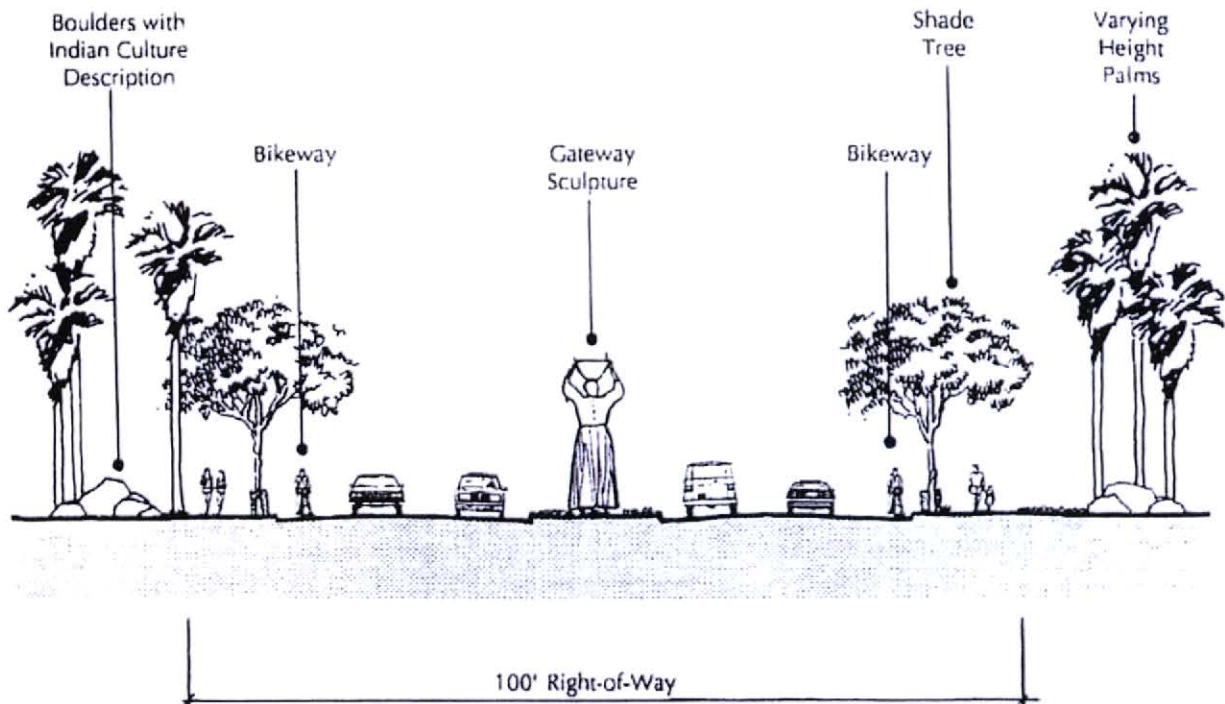




Source: Gruen Associates

SECTION 14  MASTER DEVELOPMENT PLAN

FIGURE 5-5
Tahquitz Canyon Way
Gateway at Sunrise Way
Streetscape/Circulation Concept



Source: Gruen Associates

SECTION 14  MASTER DEVELOPMENT PLAN

FIGURE 5-5
Tahquitz Canyon Way
Gateway at Sunrise Way
Streetscape/Circulation Concept







116°32'28"W

116°31'55"W

33°49'41"N

33°49'41"N

33°49'10"N

33°49'10"N

116°32'28"W

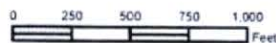
116°31'55"W

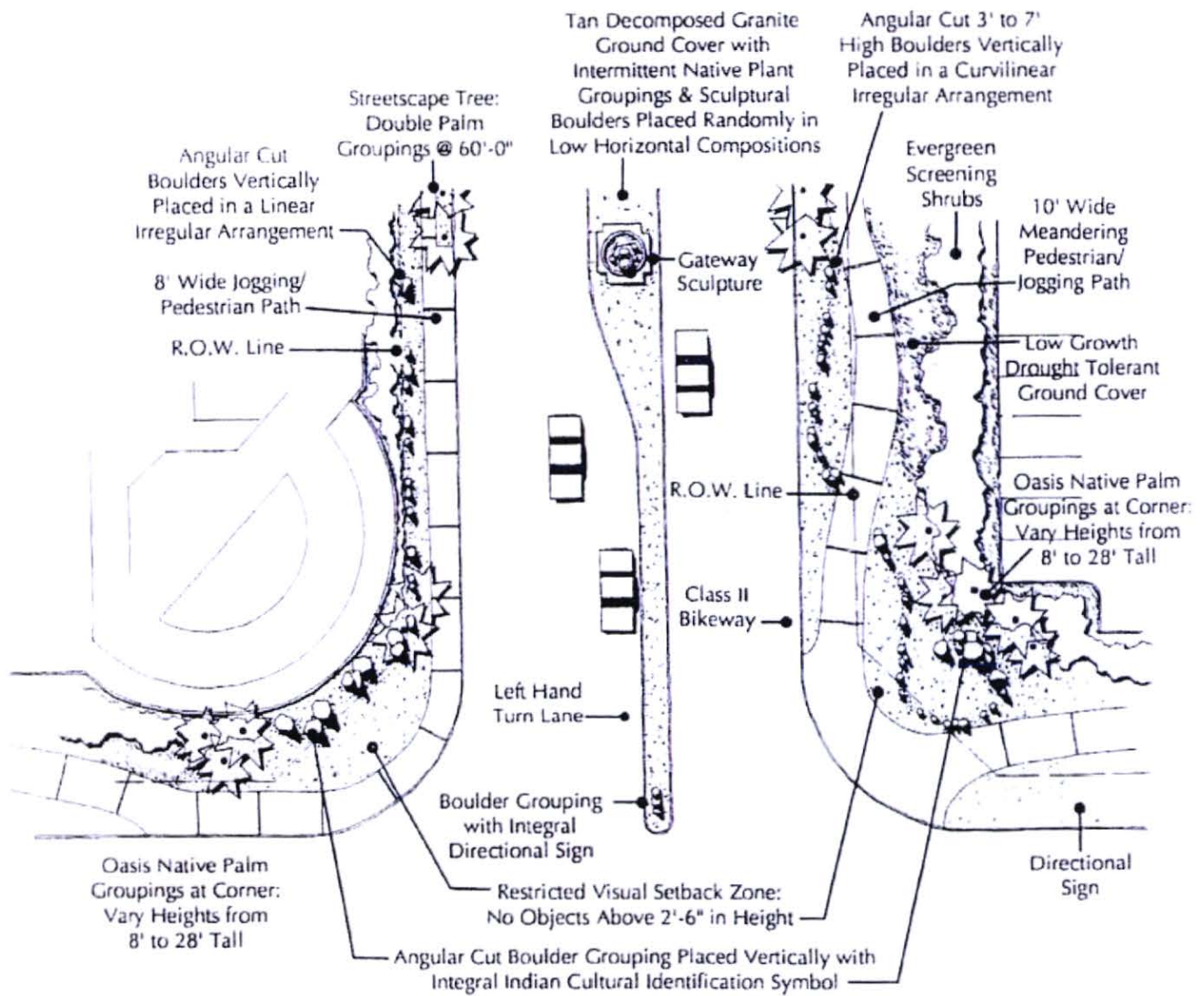


AGUA CALIENTE INDIAN RESERVATION TOWNSHIP 4 SOUTH RANGE 4 EAST SECTION 14 GATEWAYS

Township Sections

- Type 1 Proposed
- Type 2 Existing
- Type 2 Proposed





Source: Gruen Associates

SECTION 14  MASTER DEVELOPMENT PLAN

FIGURE 5-19
Type 2 Gateway Concept Plan





Doug Hyde
Sculpture Studios Inc.

TYPE 2 GATEWAY

TITLE: "Basketmaker "or "Young Basketmaker"

MEDIUM: Bronze

DIMENSIONS: 12 feet high
8 feet wide
6.5 feet deep

TIME: 9 to 12 months to complete and install

RESOLUTION NO. _____

A RESOLUTION OF THE PUBLIC ARTS COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING INSTALLATION OF THE SECTION 14 MASTER PLAN TYPE II GATEWAY ELEMENT IN THE MEDIAN ON TAHQUITZ CANYON WAY WEST OF SUNRISE WAY; AND ACCEPT THE DONATION OF THE TYPE II SCULPTURE AS PART OF THE CITY'S PUBLIC ART COLLECTION.

WHEREAS, the City Council created according to Chapter 2.24 of the Palm Springs Municipal Code (Section 2.24.010) the Public Arts Commission; and

WHEREAS, the Section 14 Type I and II Gateway Elements are a requirement of the Section 14 Master Plan, which was approved by the Agua Caliente Band of Cahuilla Indians and adopted by the City Council in March 2004; and

WHEREAS, the Tribe assumed the cost of developing a design for the Type II design feature, in collaboration with the Public Arts Commission and Indian Planning Commission to ensure the uniformity and appropriateness of the Gateway features; and

WHEREAS, the first Type II sculpture "Cahuilla Women" by artist Doug Hyde located at Tahquitz Canyon Way and Indian Canyon Drive was approved by the Public Arts Commission in 1992 and installed in 1994; and

WHEREAS, on April 9, 2009 Tribal Planning Staff made a presentation to the Public Arts Commission for the second Type II Gateway sculpture by artist Doug Hyde to be placed at Tahquitz Canyon Way and Sunrise Way; and

WHEREAS, the Tribe has commissioned Doug Hyde Sculpture Studio and received a work of art titled the "Young Basketmaker" as the second Section 14 Master Plan Type II Gateway Sculpture; and

WHEREAS, the Tribe has held sole responsibility with respect to the contract entered into for the commissioning of the Artwork including responsibility for all payments and installation costs in the median on Tahquitz Canyon Way west of Sunrise Way in accordance with the Section 14 Master Plan; and

WHEREAS, at the July 11, 2014 Public Arts Commission meeting, Tribal Planning Staff made a presentation for the Donation of Artwork for the sculpture "Young Basketmaker", fabricated from bronze and 12'x8'x6.5' in size to become part of the City's Public Art Collection; and

NOW, THEREFORE, be it resolved that the Public Arts Commission recommends:

1) INSTALLATION OF THE SECTION 14 MASTER PLAN TYPE II GATEWAY ELEMENT BY DOUG HYDE IN THE MEDIAN ON TAHQUITZ CANYON WAY WEST OF SUNRISE WAY; AND

2) RECOMMEND ACCEPTANCE OF THE DONATION OF THE TYPE II GATEWAY ELEMENT SCULPTURE "YOUNG BASKETMAKER" BY DOUG HYDE AS A PART OF THE CITY'S PUBLIC ART COLLECTION.

ADOPTED the _____ day of _____, 2014

James Thompson
City Clerk

ATTEST:

Jennifer A. Henning
Public Arts & Special Projects Coordinator

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

**AGUA CALIENTE BAND OF CAHUILLA INDIANS
Tribal Planning and Development Department
5401 Dinah Shore Drive
Palm Springs, CA 92264**

Space above this Line Reserved for Use by Recorder

AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP

This AGREEMENT FOR TRANSFER OF ARTWORK OWNERSHIP ("Agreement") is entered into as of _____, 2014 by and between the AGUA CALIENTE BAND OF CAHUILLA INDIANS ("Tribe"), a federally-recognized Indian Tribe governing itself according to a Constitution and By-Laws and exercising sovereign authority over the lands of the Agua Caliente Indian Reservation ("Reservation"), and the CITY OF PALM SPRINGS, a municipal corporation ("City").

RECITALS:

A. The Section 14 Master Plan Type 2 Gateway Concept Plan calls for the installation of a gateway sculpture in the median at the intersection of Tahquitz Canyon Way and Sunrise Way.

C. The Tribe has commissioned a work of art that complies with the gateway sculpture requirements of the Type 2 Gateway Concept Plan.

D. The Tribe desires to transfer ownership of the work of art to the City, and have such artwork placed on the Reservation in the Tahquitz Canyon Way median west of Sunrise Way in accordance with this Agreement, the Section 14 Master Plan, and the City of Palm Springs Public Art Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance").

E. NOW THEREFORE, to comply with the requirements of the Section 14 Master Plan and the Public Art Ordinance, and for good and valuable consideration, the parties hereto hereby agree as follows:

1. Tribal Representative. The Chief Planning and Development Officer or his designee ("Contract Officer"), shall be the Tribe's designated representative with respect to this Agreement. The Contract Officer shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the Tribe for purposes of this Agreement.

2. Agreement to Commission Work of Art. The Tribe commissioned Doug Hyde Sculpture Studio ("Artist") and received a work of art titled the "Young

Basketmaker" and described as one of the two Section 14 Master Plan Type 2 Gateway Sculptures, as shown on Exhibit "A" ("Artwork"). The Tribe has held sole responsibility with respect to the contract entered into for the commissioning of the Artwork ("Contract") including responsibility for all payments.

3. Installation of Artwork. The Tribe shall install the Artwork in the Tahquitz Canyon Way median, as shown on Exhibit "B" ("Site"). The Tribe shall provide for the installation of the Artwork on the Site including, without limitation, constructing any improvements necessary for displaying the Artwork other than those being constructed as part of the Tahquitz Canyon Way Median Landscaping Improvements Project, City Project No. 08-20.

4. Transfer of Ownership. Upon installation of the Artwork, this Agreement serves as formal acknowledgement of transfer of ownership of the Artwork to the City.

5. Duties of Ownership. Upon transfer of ownership, the City shall be responsible for all maintenance necessary as recommended by the Artist with respect to the Artwork to preserve such Artwork in a first class condition.

6. Default.

(a) Cure Rights. In the event of any default or breach of any of the covenants or conditions contained in this Agreement by the City, the Tribe shall have all rights and remedies permitted at law or in equity including, without limitation, the remedy of specific performance. Additionally, in the event that the City has not cured any curable default hereunder within thirty (30) days after written notice from the Tribe of such default, the Tribe shall have the right to cure such default and charge the City with the cost thereof, including all costs incurred in connection with enforcing this Agreement or in collecting such amounts from the City.

(b) Location and Removal of Artwork. In the event that the Artwork is removed from the Site, ownership of the Artwork will revert back to the Tribe and this Agreement shall be terminated.

7. Identification. The Artwork shall be identified by a plaque stating, at a minimum, the Artist's name, the title, the date the Artwork was completed, and stating that the Artwork was funded by the Agua Caliente Band of Cahuilla Indians. The Tribe shall be responsible for the creation and installation of the identification plaque.

8. Maintenance. The City shall repair and/or replace any damage to the Artwork within fourteen (14) calendar days of such damage being discovered. In the event any graffiti is discovered on the Artwork, the City shall remove such graffiti on the day it is discovered. So long as the Artwork remains on the Site, the City shall keep, maintain, repair and replace the Artwork in a good, clean and first class condition and of the highest quality. Materials used to restore, repair or replace any portion of the Artwork shall be of equal or better quality than the original materials used in the Artwork. When necessary, the City shall consult the

Tribe and the Artist to determine the best methods of such restoration or repair. All such maintenance, repair, replacement and restoration shall be at the sole cost of the City. In addition to all other remedies provided by law, in the event the City fails to maintain the Artwork, upon reasonable notice, the Tribe may contract the Artist to perform all necessary repairs, maintenance or secure insurance, and at the sole discretion of the Tribe, charge the City for the costs thereof.

9. Indemnification. The City hereby agrees to indemnify, defend and hold harmless the Tribe, its agents, and employees from and against any and all actions, suits, claims, damages, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "Claims or Liabilities") arising out of or in any way connected with any act, omission or negligence of the City, its agents, employees or contractors, or from the existence of the Artwork on the Site, or related to this Agreement, including, without limitation, bodily injury to or death of persons, injury or damage to property and attorneys' fees, but excluding such Claims or Liabilities resulting solely from the willful misconduct of the Tribe, its officers, agents, representatives or employees who are directly responsible to the Tribe.

10. Rights to Artwork. All copyrights to the Artwork shall be transferred to the City together with the Artwork. Artist and the City shall share copyright to the Artwork with the Tribe in accordance with the terms and conditions set forth in Exhibit "C" attached hereto ("Copyright Agreement").

11. Attorneys' Fees. In the event that any action or proceeding is instituted for the interpretation or enforcement of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party, all costs and expenses related to such action or proceeding, including, without limitation all attorneys' fees and expert witness fees, both at trial and on appeal.

12. Integration. This Agreement and other documents expressly incorporated herein by reference contain the entire and exclusive understanding and agreement between the parties relating to the matters contemplated hereby and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

13. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

14. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

[SIGNATURES ON NEXT PAGE]

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By: _____
Chief Planning & Development Officer

Date: _____

CITY OF PALM SPRINGS

By: _____
City Manager

Date: _____

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Agency Counsel

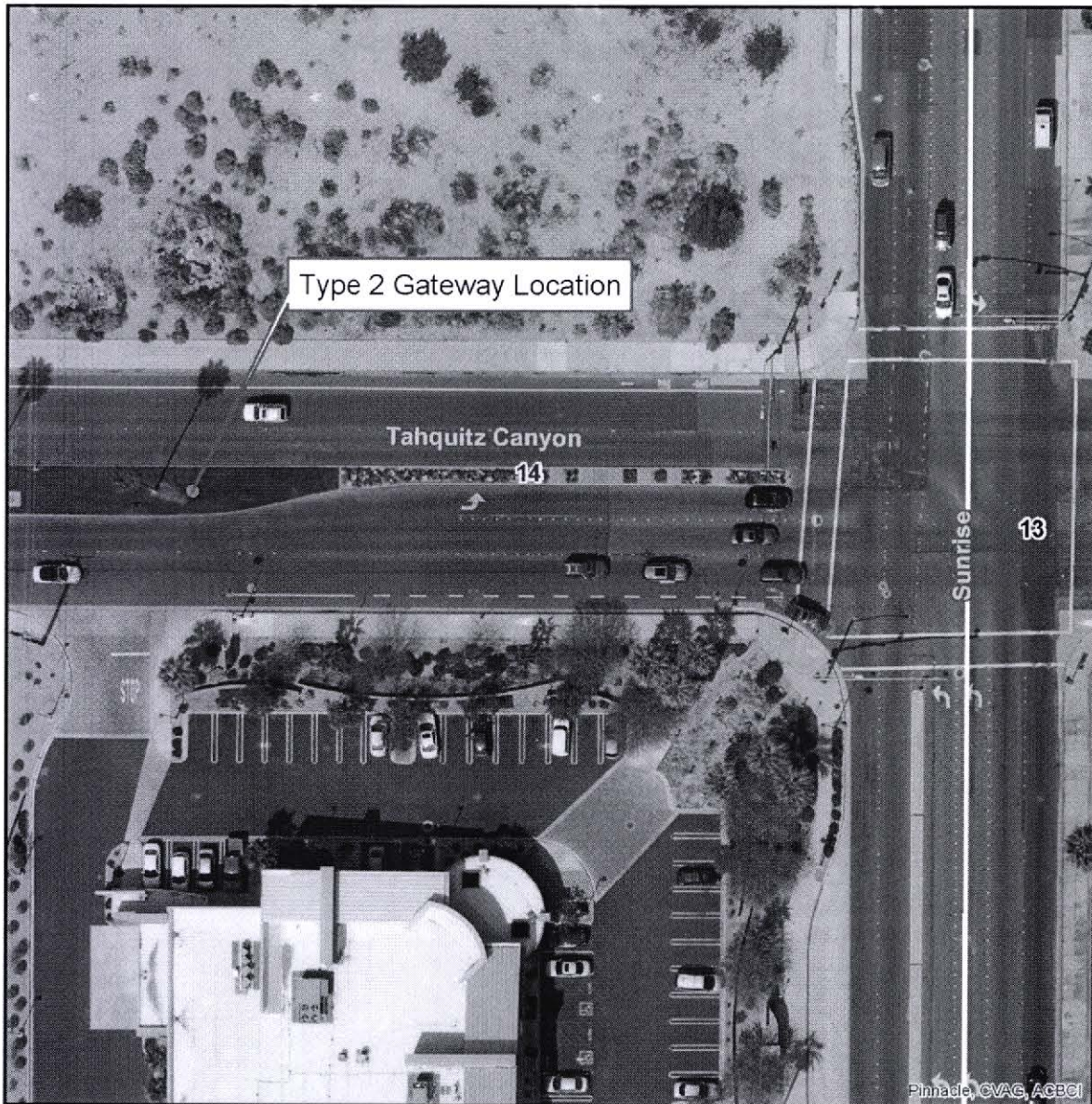
Date: _____

EXHIBIT "A"

"NEW BASKETMAKER"

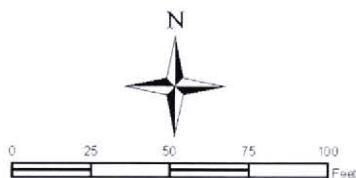


EXHIBIT "B"



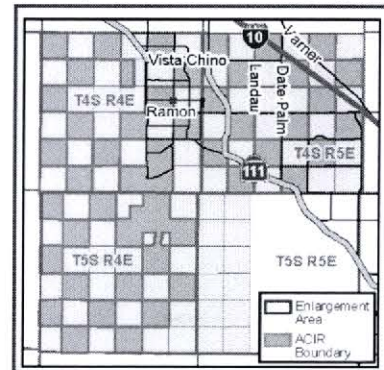
**AGUA CALIENTE INDIAN RESERVATION
TAHQUITZ CANYON / SUNRISE
TYPE 2 GATEWAY SCULPTURE LOCATION**

- Type 2 Gateway
- 00 Township Sections
- 00 Reservation Sections



Agua Caliente Band of Cahuilla Indians
Planning & Development Department
5401 Dana Shore Drive, Palm Springs, CA, 92264
Geospatial Information Services
(760) 893-1911 Fax: (760) 893-1937

Boundary data in this map is for representation purposes only. It does not cover questions of location which a survey map may disclose.



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EXHIBIT "C"

(COPYRIGHT AGREEMENT)

This COPYRIGHT AGREEMENT ("Agreement") is entered into as of _____, 2014 by and between the AGUA CALIENTE BAND OF CAHUILLA INDIANS ("Tribe"), the CITY OF PALM SPRINGS ("City"), and Doug Hyde Sculpture Studio, ("Artist").

The Tribe has commissioned a work of art ("Artwork") created by the Artist and more particularly described in that certain Consulting Services Agreement dated December 14, 2007, by and between the Tribe and Doug Hyde Sculpture Studio. The Artist hereby acknowledges the Consulting Services Agreement. Artist has delivered the completed Artwork to the Tribe and the Tribe has accepted the Artwork.

Pursuant to the Consulting Services Agreement, the Artist has transferred all rights under applicable copyright laws to the Artwork to the Tribe. Artist and Tribe hereby agree to share copyright to the Artwork and hereby transfer, convey and assign to the City the right to make reproductions, photographs and other two dimensional, less than full-scale, non-exact reproductions of the Artwork for both commercial and non-commercial purposes.

The Artist warrants that the Artwork is unique and a single-edition, and that the Artist will not execute or authorize another to execute another work of substantially the same design as the Artwork. The covenants and warranties of the Artist shall be binding on the Artist's heirs and assigns.

Due to the nature of the Artwork and the Site on which it is to be placed and the public interest of the City, Artist and his/her agents, heirs, successors and assigns hereby waive any and all rights they may have under the California Art Preservation Act, as set forth in California Civil Code Section 987. The Artist, his/her agents, heirs, successors and assigns also agree not to attempt to defeat this waiver by cooperating with any other person or organization which seeks to bring an action under California Civil Code Section 989.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By: _____
Chief Planning & Development Officer

Date: _____

CITY OF PALM SPRINGS

By: _____
City Manager

Date: _____

ARTIST

By: _____
Doug Hyde Sculpture Studio

Date: _____