



City Council Staff Report

Date: September 7, 2016 NEW BUSINESS

Subject: APPROVAL OF AN AGREEMENT WITH CATHEDRAL CITY FOR THE CONSTRUCTION AND MAINTENANCE OF THE CATHEDRAL CITY WHITEWATER BIKE TRAIL

From: David H. Ready, City Manager

Initiated by: Department of Engineering Services

SUMMARY

This action approves an agreement with the City of Cathedral City relating to the construction and maintenance of the Cathedral City Whitewater Bike Trail that will extend along the west levee of the Whitewater River between Ramon Road and Vista Chino.

RECOMMENDATION:

- 1) Approve Agreement No. _____, an Agreement by and between the City of Palm Springs and City of Cathedral City associated with the Whitewater Bike Trail; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

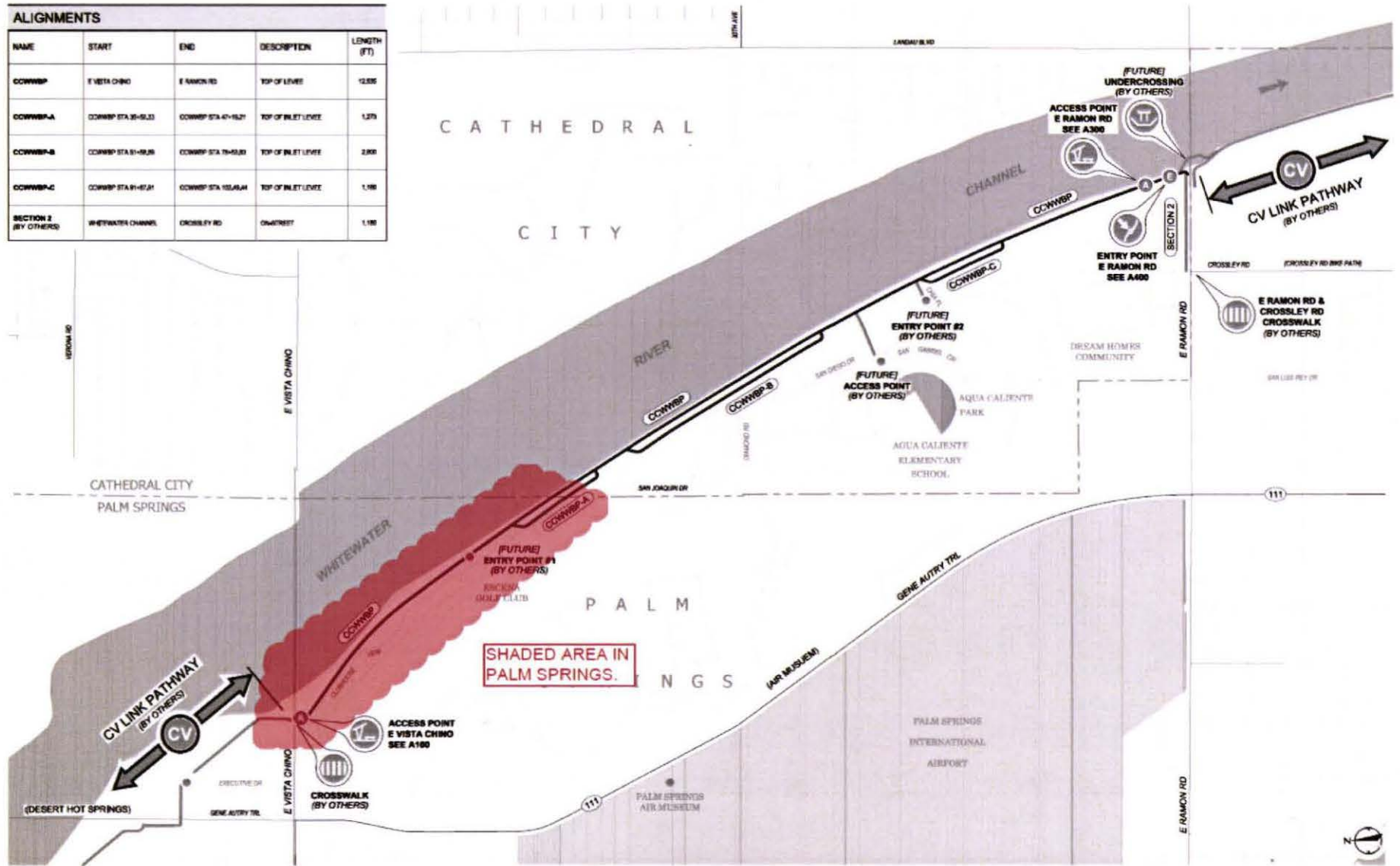
The City of Cathedral City proposes to construct a concrete bike and pedestrian path along the top of the existing western levee of the Whitewater River between Vista Chino on the north to Ramon Road on the south for a total distance of approximately 2.5 miles. At the Ramon Road terminus, the proposed bike path will continue west along the north side of Ramon Road for approximately 0.22 miles to Crossley Road, where it will end. Improvements are planned primarily within the existing Ramon Road right of way and the existing right of way of the Whitewater River Channel. A location map of the project is provided in Figure 1, a detailed alignment of this segment of the bike path is provided in Figure 2, and typical cross-sections are provided in Figures 3 and 4.



Source: Google Earth, 2015

Figure 1 – Location Map

ALIGNMENTS				
NAME	START	END	DESCRIPTION	LENGTH (FT)
CCWBWP	E VISTA CHINO	E RAMON RD	TOP OF LEVEE	12,500
CCWBWP-A	CCWBWP STA 35+50.00	CCWBWP STA 47+15.21	TOP OF INLET LEVEE	1,271
CCWBWP-B	CCWBWP STA 51+50.00	CCWBWP STA 70+50.00	TOP OF INLET LEVEE	2,000
CCWBWP-C	CCWBWP STA 91+47.81	CCWBWP STA 105.00+00	TOP OF INLET LEVEE	1,350
SECTION 2 (BY OTHERS)	WHITWATER CHANNEL	CROSSLEY RD	CROSSWALK	1,100



PROJECT PLAN
 SCALE: 1" = 500'

Figure 2

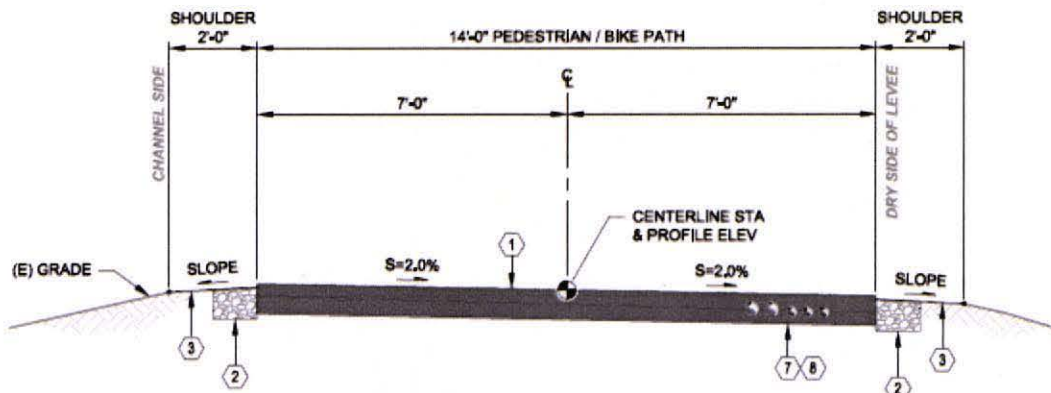


Figure 3

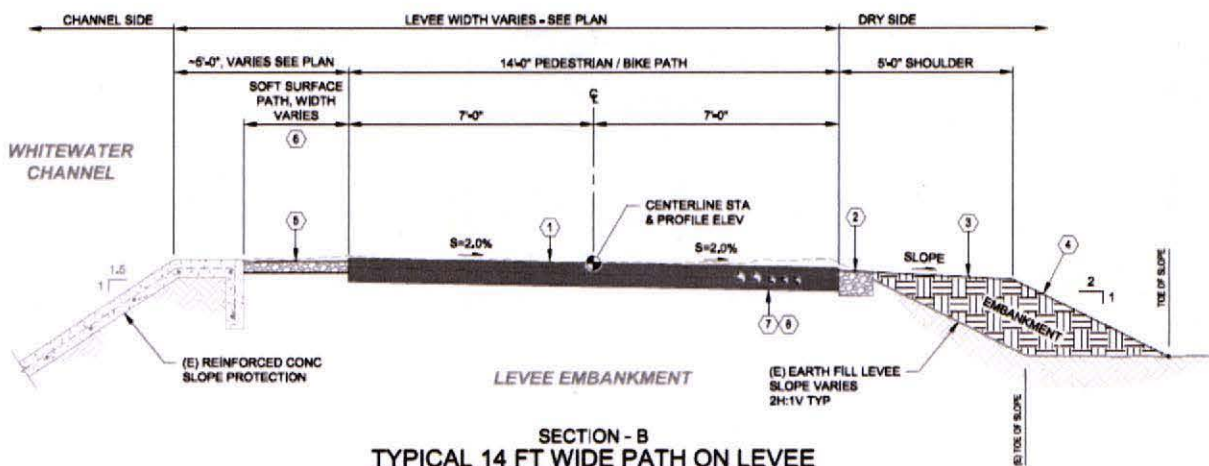


Figure 4

Bicycle Transportation Account (BTA) Funds were allocated to Cathedral City by Local Agency – State Agreements No. BTA 08/09-08-RIV-01 and No. BTA 09/10-08-RIV-05 for the Bicycle Transportation Account projects defined as Whitewater River Bike Trail Phase 1 and Phase 2. The funds were allocated to the City of Cathedral City in 2009 and 2010. Cathedral City applied for and received the BTA Funds to complete its section of the Coachella Valley Regional Bikeway, and to create a safe and convenient route for commuter and recreational bicyclists traveling to and from work and school.

The original alignment for the Whitewater River Trail was along the east levee of the Whitewater River between Vista Chino and Ramon Road. Planning for the Phase 1 project was underway when Cathedral City determined that the underlying easement for maintenance access on the east levee excluded recreational uses and would require new easements from affected Indian landowners. As a result, Cathedral City requested and Caltrans approved relocation of the Whitewater River Trail to the west levee. Cathedral City commenced the preliminary engineering and planning phase for the Whitewater River Trail prior to CVAG commencing with its regional bike path project now known as CV Link.

The Whitewater Bike Trail is a project being undertaken solely by Cathedral City separate from CVAG's CV Link project. Cathedral City is the lead agency on this project, and has completed an environmental document and final design. Cathedral City prepared a conceptual presentation on the proposed elements of the Whitewater Bike Trail, included as **Attachment 1**. The segment of the bike path being constructed by Cathedral City is located on the west levee of the Whitewater River, behind the easterly walls of the Escena development, located within Riverside County Flood Control District rights-of-way.

Cathedral City took formal action on February 24, 2016, to approve the Whitewater Bike Trail; a copy of the related staff report and Resolution are included as **Attachment 2**.

As there is a portion of the proposed Whitewater Bike Trail being constructed by Cathedral City located in the City of Palm Springs, it is necessary to enter into an agreement identifying terms and conditions for the construction and maintenance of the new bike path. Cathedral City has prepared an agreement identifying the following terms:

- Cathedral City 100% responsible for all construction costs of the Whitewater Bike Trail
- Cathedral City 100% responsible for all maintenance costs within City of Palm Springs for a period of 5 years, or until CVAG's assumption of responsibility for the maintenance of the Whitewater Bike Trail as part of CV Link
- Palm Springs grants Cathedral City permission to construct the Whitewater Bike Trail along the west levee located within the City of Palm Springs
- Palm Springs to assume 100% responsibility for all maintenance costs associated with the Whitewater Bike Trail located in the City of Palm Springs at a date 5 years after Cathedral City files a Notice of Completion, or until CVAG's assumption of responsibility for the maintenance of the Whitewater Bike Trail as part of CV Link

A copy of the draft agreement with Cathedral City is included as **Attachment 3**.

ENVIRONMENTAL IMPACT:

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). In accordance with the CEQA Guidelines, Cathedral City acting as "Lead Agency" pursuant to CEQA, previously completed an environmental analysis and prepared an Initial Study / Mitigated Negative Declaration ("IS/MND") identifying the potential impacts resulting from construction of the Whitewater Bike Trail. The IS/MND was circulated for public comment from February 4 to 23, 2016. On February 24, 2016, the City Council of the City of Cathedral City adopted the Mitigated Negative Declaration for the Whitewater Bike Trail.

The Whitewater Bike Trail is consistent with the Circulation Element of the City of Palm Springs General Plan. The City of Palm Springs Bikeway Map adopted in 2011 identifies a proposed Class I Bike Path as a "Top Priority Project" located along the westerly Whitewater River levee within Palm Springs, as shown in Figure 5.

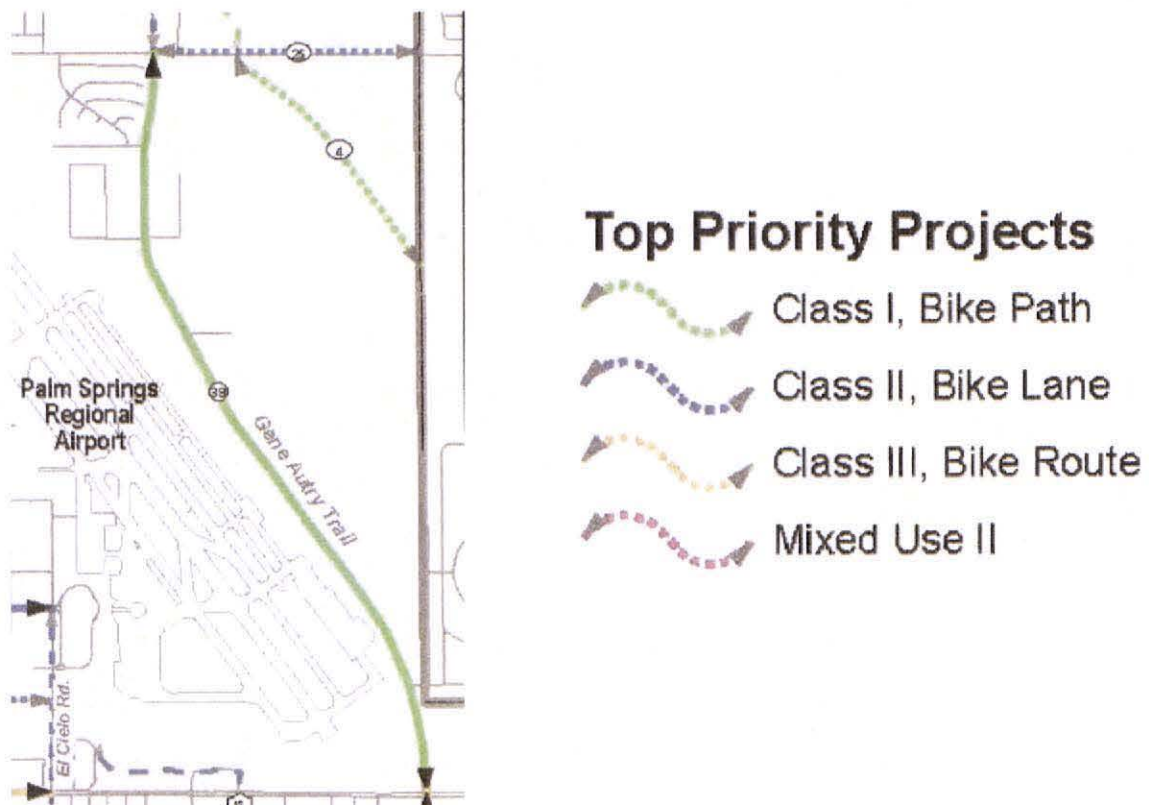


Figure 5

FISCAL IMPACT:

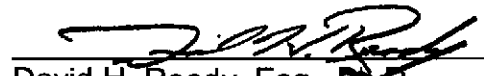
The City of Cathedral City as lead agency is responsible for 100% of all costs associated with the planning, environmental analysis, engineering design, and construction of the Whitewater Bike Trail. Pursuant to the terms of the agreement with Cathedral City, Cathedral City will assume 100% responsibility for all maintenance costs of the Whitewater Bike Trail, inclusive of maintaining that portion located in Palm Springs, for a period of 5 years after completion of its construction. At a point in time following 5 years of its completion, Palm Springs will assume 100% responsibility for all maintenance costs on that portion of the Whitewater Bike Trail located in Palm Springs. The portion of the Whitewater Bike Trail located in Palm Springs is approximately 4,300 feet (0.8 miles), and staff estimates an annual maintenance cost of approximately \$10,000 per mile for concrete bike path trail maintenance.

To the extent that CVAG, as part of its separate regional CV Link bike path project, proceeds to construct the CV Link connecting to the Whitewater Bike Trail, and CVAG assumes responsibility for all maintenance costs associated with the CV Link (inclusive of the Whitewater Bike Trail), all maintenance costs associated with the Whitewater Bike Trail will be identified in joint-cooperative agreements with all CVAG jurisdictions responsible for their portions of the CV Link.

SUBMITTED:



Marcus L. Fuller, MPA, PE, PLS
Assistant City Manager/City Engineer



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

Attachments:

1. Cathedral City Bike Path Presentation
2. Cathedral City Staff Report/Resolution – February 24, 2016
3. Agreement

ATTACHMENT 1



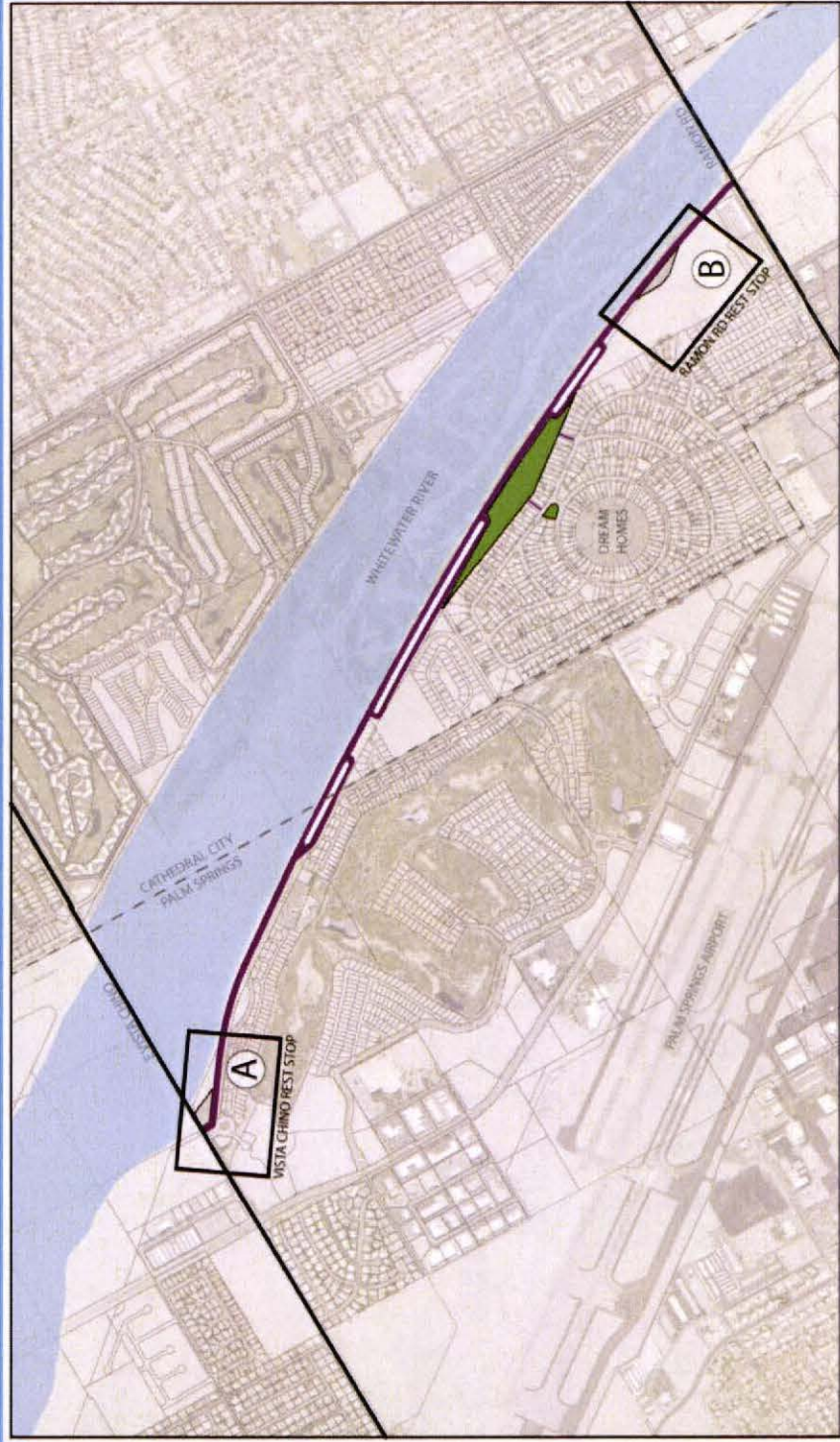
Cathedral City Whitewater Bike Path

Presented By

Cathedral City Engineering Division



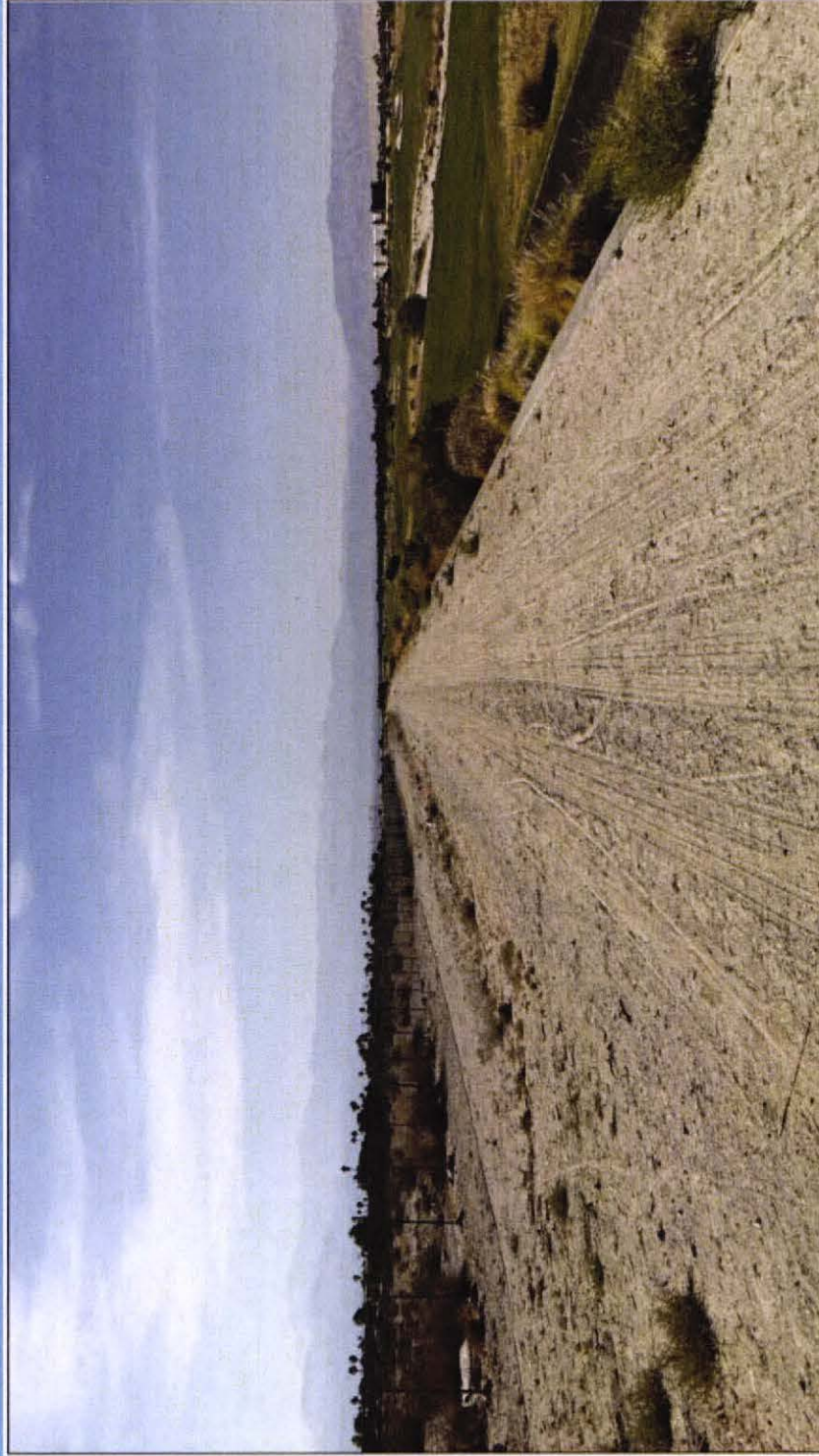
CC Whitewater Bike Path



Cathedral City

DiscoverCathedralCity.com

CC Whitewater Bike Path



Cathedral City

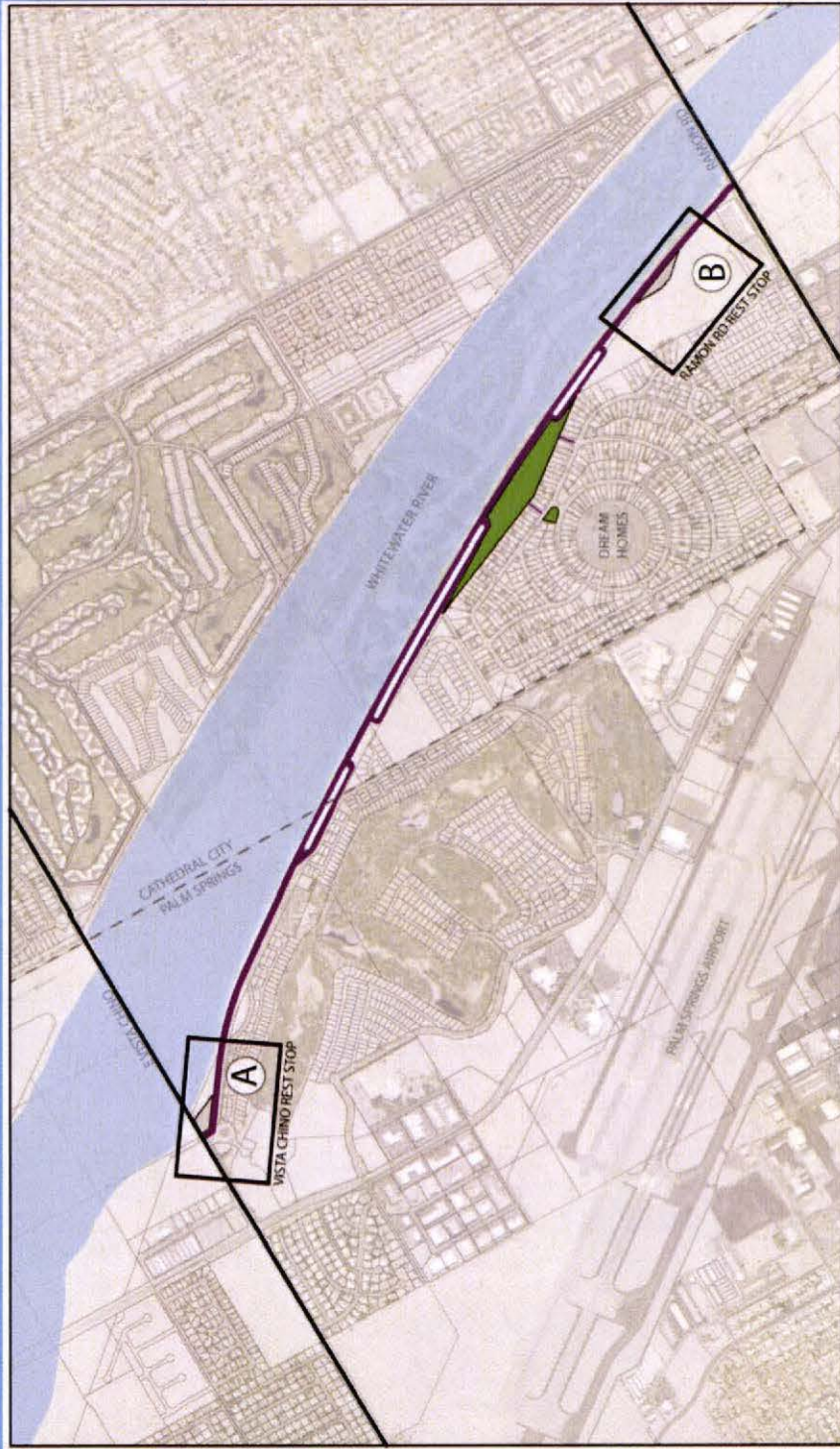
DiscoverCathedralCity.com

CC WWR Bike Path



Cathedral City

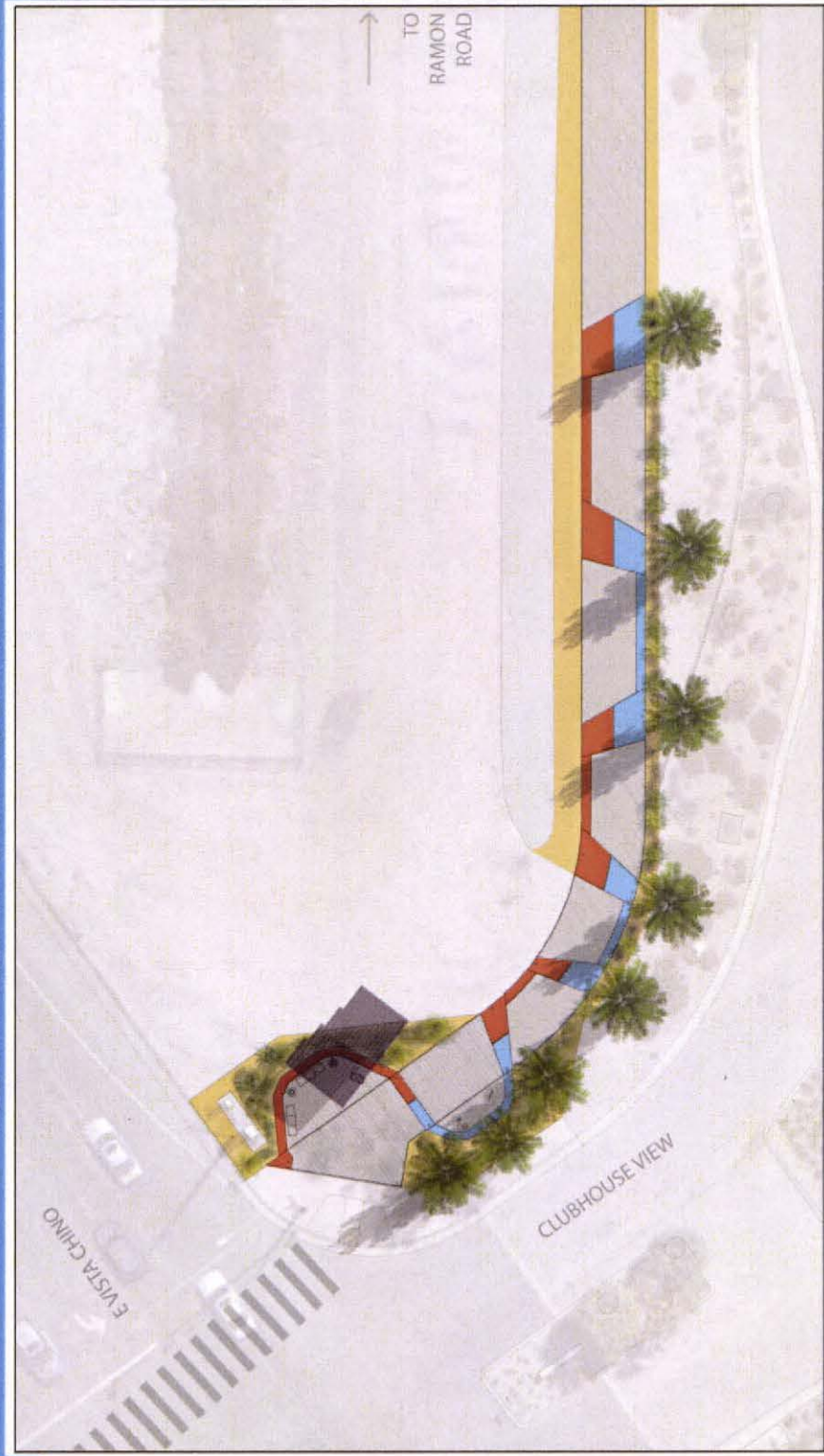
CC Whitewater Bike Path



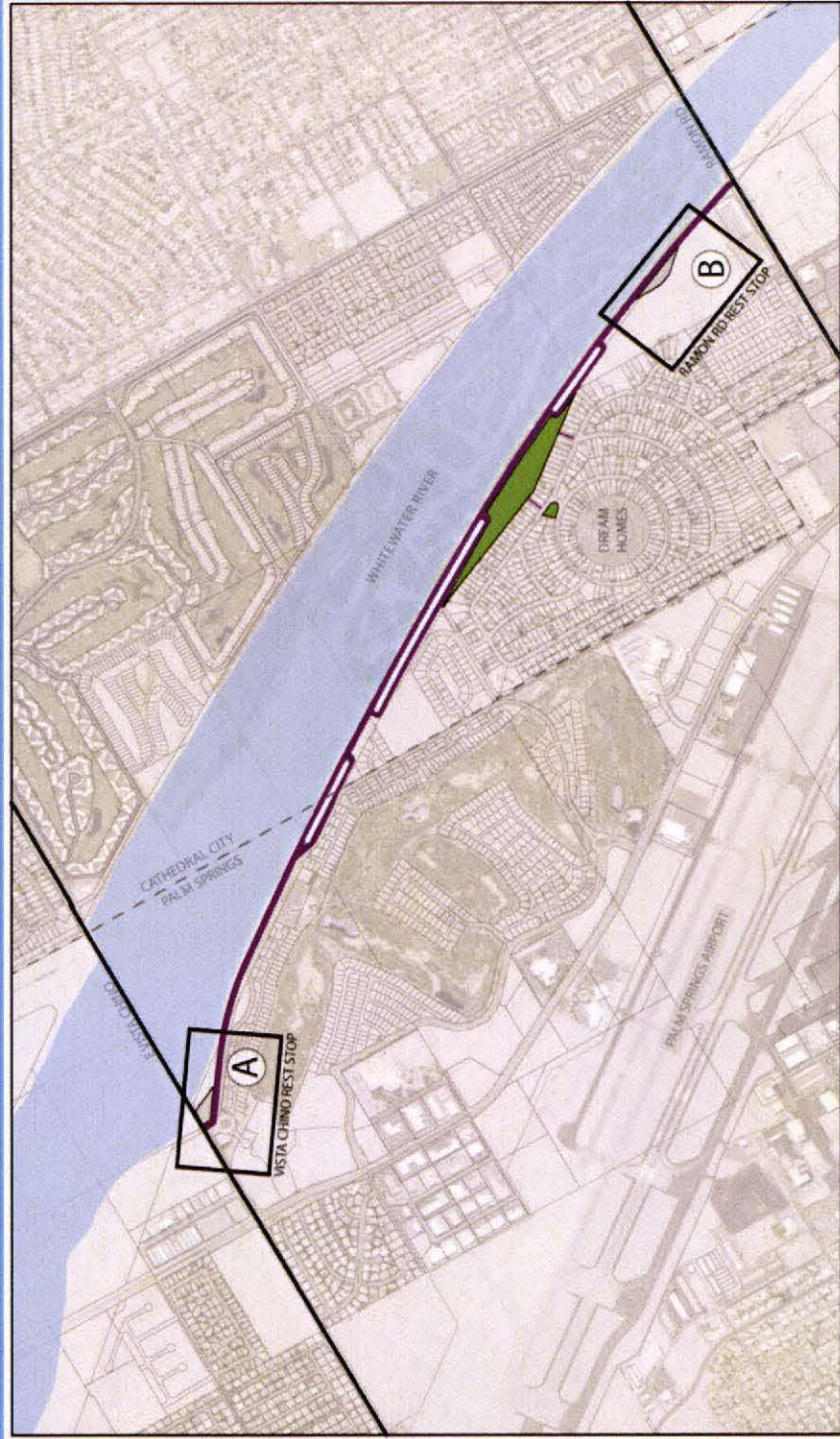
Cathedral City

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Vista Chino Access Point



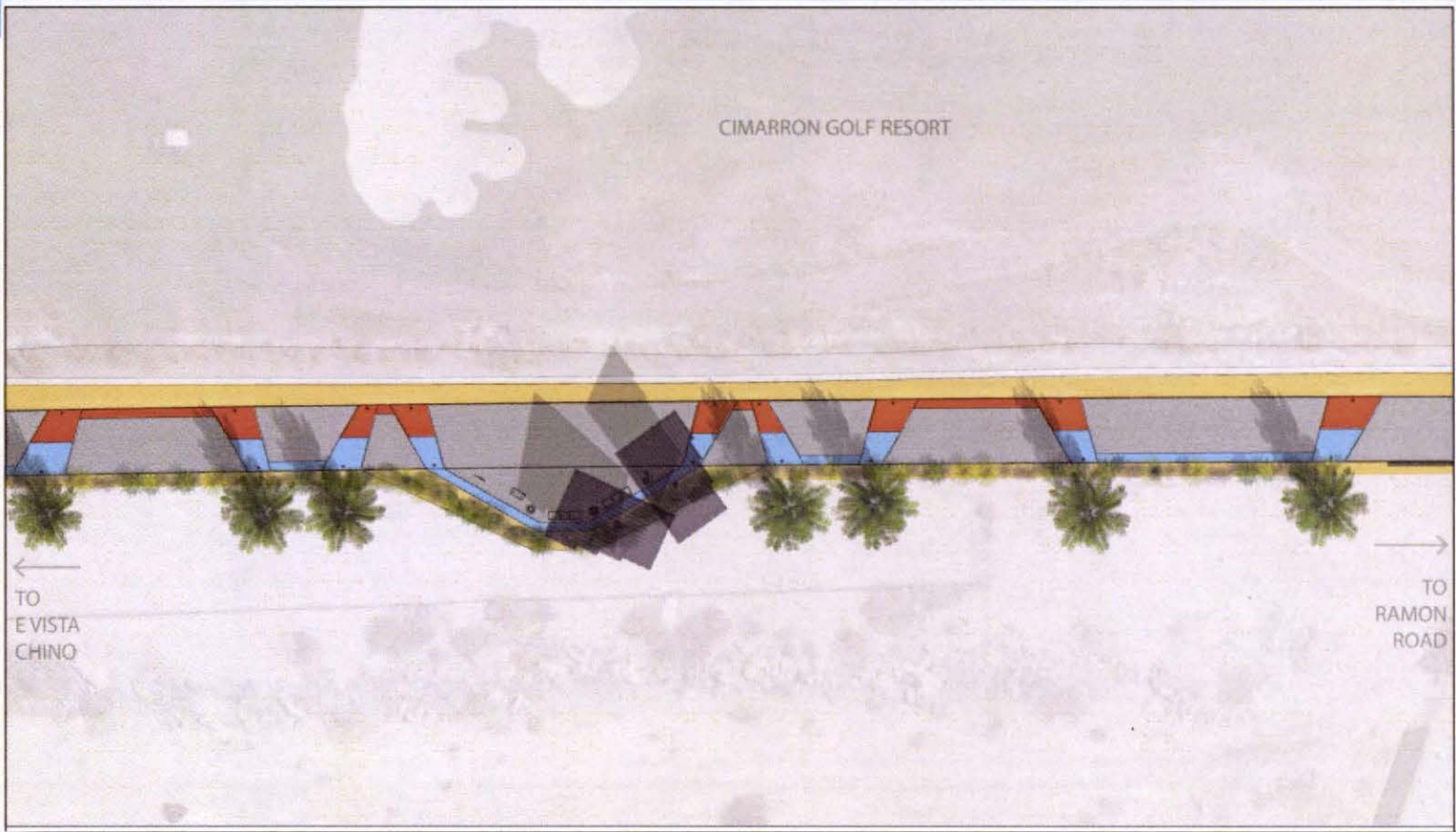
CC Whitewater Bike Path



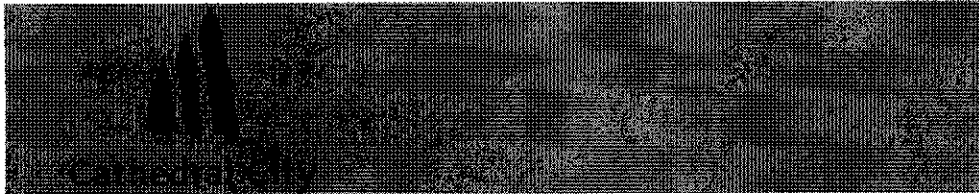
Cathedral City

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Ramon Road Access Point



ATTACHMENT 2



Home Legislation Calendar City Council Meeting Bodies Members

Meetings Prior to 11/12/2014

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Details Reports

File #:	2016-52	Version: 1	Name:	
Type:	Staff Report		Status:	Consent Agenda
File created:	2/10/2016		In control:	<u>City Council</u>
On agenda:	2/24/2016		Final action:	
Title:	Mitigated Negative Declaration and CUP 16-001 for City of Cathedral City Capital Improvement Project No. 7015, Construction of the Whitewater Bike Path.			
Attachments:	1. Whitewater Bike Trial IS-MND , 2. Whitewater Bike Trail NOI , 3. CC WWR CC Reso 2.11.pdf , 4. City of Palm Springs Concurrence Letter for CEQA , 5. CC WWR IS RivCo Comm Ltr 2.18.16 , 6. Comments Email (1) , 7. Comments Email (2)			

History (0) Text

City Council

MEETING DATE: 2/24/2016

TITLE:

Mitigated Negative Declaration and CUP 16-001 for City of Cathedral City Capital Improvement Project No. 7015, Construction of the Whitewater Bike Path.

FROM:

John A. Corella, P.E. City Engineer

RECOMMENDATION:

Staff recommends that the City Council adopt a Mitigated Negative Declaration for the Whitewater River Bike Path Project and approve Conditional Use Permit 16-001.

BACKGROUND:

The project proposes the construction of a 16±-foot wide concrete bike and pedestrian path along the top of the existing western levee of the Whitewater River between Vista Chino on the north and Ramon Road on the south for a total distance of 2.5± miles. At the Ramon Road terminus, the proposed bike path will continue west along the north side of Ramon Road for approximately 0.22 miles to Crossley Road, where it will end. The northern portion of the proposed bike path will be located within the Palm Springs city limits and the City of Palm Springs has agreed to act as a Responsible Agency under CEQA.

Once the environmental and CUP review process is completed, the City will complete the final design and engineering needed to construct the improvements. It is anticipated that construction will commence later this year.

DISCUSSION:

An Initial Study was completed in accordance with the City's Guidelines implementing the California Environmental Quality Act. The Initial Study was undertaken for the purpose of deciding whether the project may have a significant effect on the environment. This Initial Study determined that development of the project would not have a significant impact on the environment, with the implementation of the mitigation measures proposed in Table 1. On the basis of the Initial Study, City Staff has concluded that the project will not have a significant effect on the environment, and has therefore prepared a Mitigated Negative Declaration.

The Initial Study and draft Mitigated Negative Declaration was circulated to all Responsible Agencies. The review period was February 3, 2016 to February 23, 2016.

To comply with CEQA, the Mitigated Negative Declaration for this project includes a Mitigation Monitoring Plan, which is set forth in the Mitigated Negative Declaration.

All project-related impacts can be mitigated to a less than significant level through the implementation of the Mitigation Measures set forth in the Initial Study/Mitigated Negative Declaration for Conditional Use Permit 16-001. No additional mitigation measures are required.

The Initial Study/Mitigated Negative Declaration was noticed per CEQA Guidelines. A public notice was published in the Desert Sun newspaper as required by State law. The CEQA analysis and Notice of Intent to Adopt was also posted with the County Clerk for the required 20-day period.

CEQA FINDINGS

The following CEQA findings have been made regarding the Mitigated Negative Declaration:

1. The record as a whole, including the initial study and any comments received, demonstrates that no substantial evidence exists that the project will have a significant effect on the environment;
2. The Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis;
3. In accordance with Section 15074, Chapter 3, Title 14, of the California Code of Regulations, the Mitigation Monitoring Program contained in the Mitigated Negative Declaration shall serve as the City's reporting program for monitoring the mitigation measures specified in the Mitigated Negative Declaration;
4. This project will not individually or cumulatively affect wildlife resources as defined in Section 711.2 of the California Fish and Game Code; and
5. The City of Cathedral City Planning Department is custodian of the documents or other material, which constitute the record of proceedings upon which this decision is based.

CUP FINDINGS

The following findings have been made in support of the approval of CUP 16-001:

1. The City proposes to construct a 16-foot± wide concrete bike and pedestrian path along the top of the existing western levee of the Whitewater River between Vista Chino on the north to Ramon Road on the south for a total distance of 2.5± miles. At the Ramon Road terminus, the proposed bike path will continue west along the north side of Ramon Road for approximately 0.22 miles to Crossley Road, where it will end. This recreational facility is authorized with a Conditional Use Permit in a Open Space (OS) zone and is authorized per the City of Cathedral City Zoning Ordinance, Chapter 9.72 Conditional Use Permits;

2. The use is necessary or desirable for the development of the community, is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to uses specifically permitted in the OS zone in which the recreational facility is to be located;
3. The site is adequate in size and shape to accommodate the 16-foot± wide concrete bike and pedestrian path;
4. The site for the proposed use relates properly to streets and highways which are designed and improved or will be improved to carry the type and quantity of traffic generated or to be generated by the proposed use.

FISCAL IMPACT:

The adoption of a Mitigated Negative Declaration for the project is not a fiscal action. The proposed bike path project will be funded through the Transportation Account Funds that have been allocated by Local Agency - State Agreements No. BTA 08/09-08-RIV-01 and No. BTA 09/10-08-RIV-05 to the City of Cathedral City for the Bicycle Transportation Account projects defined as Whitewater River Bike Trail Phase 1 and Phase 2.

No General Funds are allocated to implement this project.

ATTACHMENTS:

Draft Initial Study and Mitigated Negative Declaration
Notice of Intent to Adopt A Mitigated Negative Declaration
Resolution 2016-

RESOLUTION NO. 2016-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY, ADOPTING A MITIGATED NEGATIVE DECLARATION FOR THE WHITEWATER RIVER BIKE PATH AND APPROVING CONDITIONAL USE PERMIT 16-001.

WHEREAS, the City of Cathedral City, California ("City") wishes to take the following actions on subject parcels:

- Approval of a Conditional Use Permit to allow the construction of 16±-foot wide concrete bike and pedestrian path along the top of the existing western levee of the Whitewater River between Vista Chino on the north and Ramon Road on the south, and along the north side of Ramon Road from the path's southerly terminus west to Crossley Road for a total distance of 2.5± miles.
- Adopting and Ordering the filing of an Initial Study/Mitigated Negative Declaration (IS/MND) of the Whitewater River Trail based on the findings pursuant to Section 15070 (b)(1), Decision to Prepare a Negative or Mitigated Negative Declaration since it has been determined that it would have no significant impact on the environment after the effects are mitigated.

WHEREAS, the Project implements the goals and policies of the General Plans of the Cities of Cathedral City and Palm Springs.

WHEREAS, an Initial Study was prepared pursuant to the provisions of the California Environmental Quality Act ("CEQA"), Division 13 of the Public Resources Code of the State of California, beginning with §21000 (hereinafter "Act"); and

WHEREAS, the City of Palm Springs has agreed to serve as a Responsible Agency pursuant to the provisions of the California Environmental Quality Act ("CEQA"); and

WHEREAS, pursuant to Section 21152 of the Act, a public notice announcing circulation and availability of the document and intent to Adopt a Mitigated Negative Declaration was published in Desert Sun on February 4, 2016; and

WHEREAS, the Initial Study/Mitigated Negative Declaration ("IS/MND") was circulated for public comment from February 4 through February 23, 2016; and

WHEREAS, pursuant to Section 15202 of the CEQA Guidelines, Title 14, Division 6, Chapter 3, Article 13 "Review and Evaluation of EIRs and Negative Declarations", of the California Code of Regulations, CEQA does not require formal hearings at any stage of the environmental review process, and public comments may be restricted to written communications; and

WHEREAS, the IS/MND prepared for this project has concluded, and following public review, it has been determined that the Project will not have a significant effect on the environment with the adoption of avoidance and mitigation measures identified in the IS/MND; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the Project, including, but not limited to the staff report, the IS/MND, and all written and oral testimony presented.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE CITY OF CATHEDRAL CITY, AS FOLLOWS:

SECTION 1.

The above recitals are all true and correct.

SECTION 2.

The Planning Department of the City of Cathedral City, is hereby designated the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council has based its decision. The custodian of the documents is located at 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234, California.

SECTION 3.

Pursuant to Section 15063 of the CEQA Guidelines, a Mitigated Negative Declaration ("MND") of environmental impact was prepared and circulated for a 20-day public review period beginning on February 4 and ending on February 23, 2016. The Mitigated Negative Declaration adequately analyzes the general environmental setting of the Project, its potentially significant environmental impacts, and mitigation measures related to each potentially significant environmental impact for the Project, and has determined that there are no unmitigated potentially significant impacts associated with the Project.

SECTION 4.

The Project implements the following goals and policies of the General Plan:

***Goal OS 1** Environmental resources that are protected through the establishment and preservation of open space areas, which also protect residents and property from environmental hazards while providing recreational opportunities and enhancing the beauty and attraction of the community.*

***Goal OS 2** Preservation and enhancement of the City as a balanced mix of built and natural environments that contribute to the overall quality of life for its citizens and visitors, while preserving scenic resources of the desert and mountains.*

SECTION 5.

Approve the Conditional Use Permit No. 16-001 and Mitigated Negative Declaration.

SECTION 6.

Authorize the Mayor to sign Resolution No. 2016-___ approving the Conditional Use Permit and Mitigated Negative Declaration on behalf of the Cathedral City City Council.

CERTIFICATION

That the City Clerk shall certify to the passage and adoption of this Resolution; shall enter the same in the book of original Resolutions of said City; and shall make a minute of passage and adoption thereof in the records of the proceedings of the City Council of said City, and in the minutes of the meeting at which Resolution is passed and adopted.

(CONTINUED ON NEXT PAGE)

EFFECTIVE DATE

This Resolution shall take effect upon its adoption.

PASSED, APPROVED, and ADOPTED at a regular meeting of the City Council for the City of Cathedral City held on this 24th day of February, 2016 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Stan Henry, Mayor
City of Cathedral City, California

ATTEST:

Gary F. Howell, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Eric S. Vail, City Attorney

Robert Rodriguez
Development Services Manager

REVIEWED:

Charles P. McClendon, City Manager

ATTACHMENT 3

AGREEMENT BY AND BETWEEN
CITY OF CATHEDRAL CITY AND CITY OF PALMSPRINGS
FOR

WHITEWATER BIKE TRAIL

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

THIS AGREEMENT ("Agreement") is entered into this 10th day of August 2016, ("Effective Date"), by and between the City of Cathedral City ("CCC"), a municipal corporation located in the State of California, and the City of Palm Springs ("CPS"), a charter city located in the State of California for the construction and maintenance of a bicycle/pedestrian trail on the west side of Whitewater Levee south of Vista Chino within the boundaries of CPS.

RECITALS

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

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

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

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

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

Section 1. Incorporation of Recitals.

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

Section 2. Term and Termination.

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

Section 3. CCC Obligations

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

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

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

Section 4. CPS Obligations

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

Section 5. Indemnification and Hold Harmless.

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

Section 6. Notice.

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

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

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

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

Section 7. Integration.

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

Section 8. Interpretation.

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

Section 9. Waiver.

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

Section 10. Severability.

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

Section 11. Governing Law.

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

Section 12. Rights and Remedies are Cumulative.

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

default by the other party.

Section 13. Venue.

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

Section 14. Successors of Interest.

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

Section 15. Amendments.

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

Section 16. Counterparts.

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

Section 17. Authority to Enter Agreement.

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

Section 18. Captions and Headings.

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

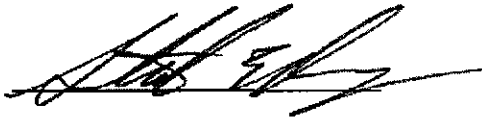
IN WITNESS WHEREOF, this Agreement has been duly executed by the respective parties hereto by their duly authorized officers as of the date hereinabove first written.

"CCC"

"CPS"

CITY OF CATHEDRAL CITY
A CALIFORNIA MUNICIPAL CORPORATION

CITY OF PALM SPRINGS
A CALIFORNIA CHARTER CITY

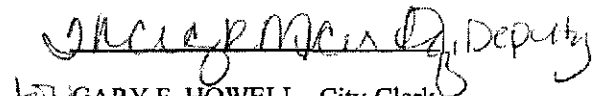


STAN HENRY, Mayor

ROBERT MOON, Mayor

ATTEST:

ATTEST:


for GARY F. HOWELL, City Clerk

JAMES THOMPSON, City Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:



CHARLES P. MCCLENDON, City Manager

DAVID READY, City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:



City Attorney

DOUG HOLLAND, City Attorney

Exhibit A

Legal Descriptions and Map of the Properties located in CPS

PARCEL A

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

Commencing at the Southeast corner of Section 7;

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

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

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

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

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

PARCEL B

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

Commencing at the Southeast corner of Section 7;

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

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

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

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

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

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

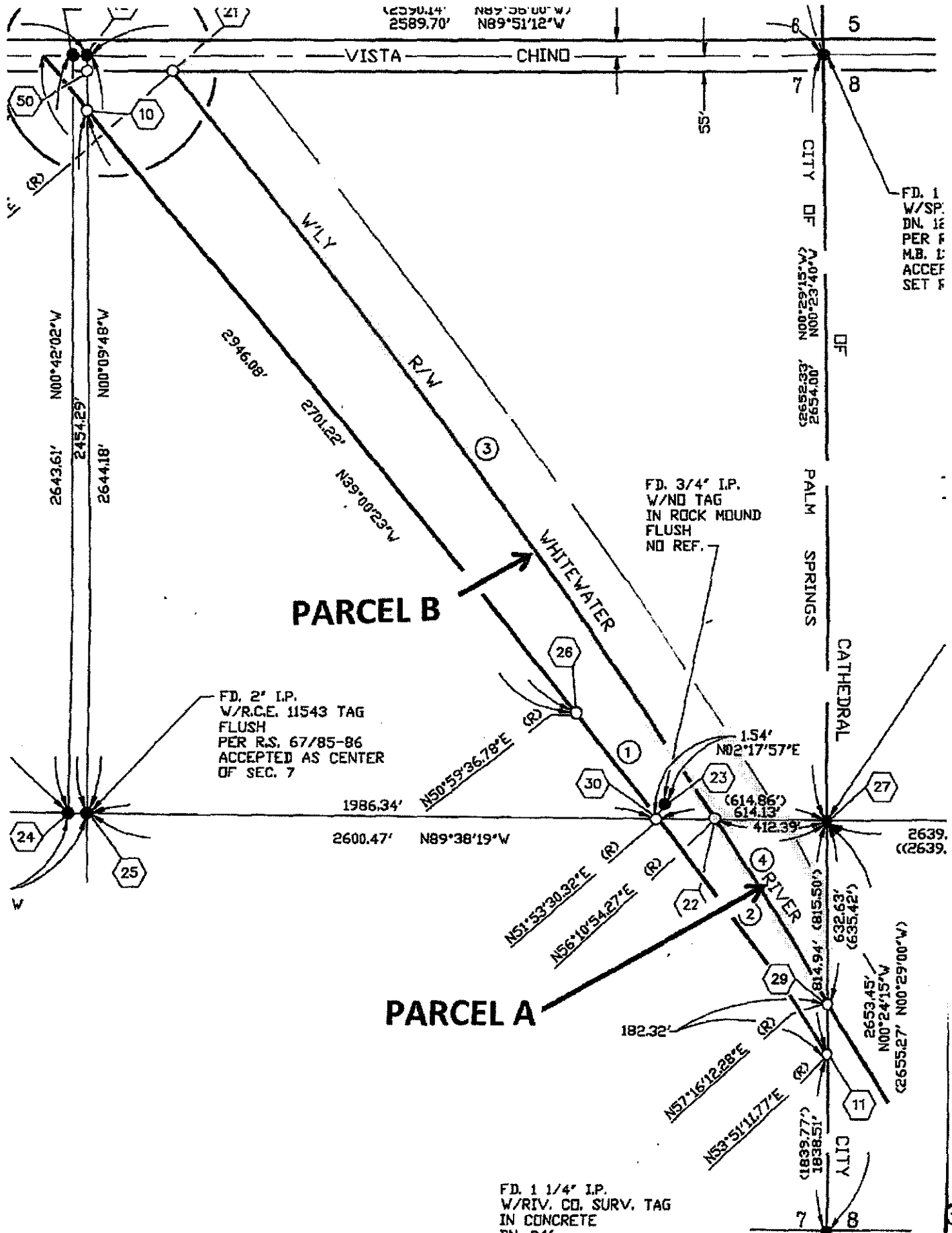


Exhibit B

Bikeway Maintenance Check List and Schedule

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