

ATTACHMENT #1

COOPERATIVE AGREEMENT FOR DESIGN AND REHABILITATION OF FRED WARING DRIVE

This COOPERATIVE AGREEMENT FOR DESIGN AND REHABILITATION OF FRED WARING DRIVE (hereinafter "Agreement") is entered into this __ day of __ 2025 between the City of Indian Wells, a municipal corporation and charter city, referred to herein as "Indian Wells," and the City of Palm Desert, a municipal corporation and charter city, referred to herein as "Palm Desert." Indian Wells, and Palm Desert are collectively referred to in this Agreement as "Contracting Parties" or "Parties."

1. RECITALS

1.1 WHEREAS, the Parties desire to cooperate on the planning and construction of certain roadway improvements that provide benefits to the residents of each party and the general motoring public on Fred Waring Drive from Deep Canyon Road to Washington Street. The roadway improvements shall consist of Crack Sealing, Patching, Applying Type II Rubberized Slurry Seal, Grind and Overlay, Striping and other associated work hereinafter referred to as "Project". The location of Project is shown in Exhibit "A", attached hereto and incorporated herein by this reference.

1.2 WHEREAS, the Project is within the jurisdictional boundaries of the Parties, as shown in Exhibit "A";

1.3 WHEREAS, the Parties desire to cooperate and jointly participate in implementing and funding the Project;

1.4 WHEREAS, the Parties desire to have one agency take the lead role in the development and implementation of the Project, to coordinate the improvements, and to reduce overall costs;

1.5 WHEREAS, Indian Wells has been designated as the lead agency for the Project and Indian Wells will therefore provide the administrative, technical, managerial, and support services necessary to develop and implement the Project; and

1.6 WHEREAS, the Parties desire to define herein the terms and conditions under which said Project is to be administered, coordinated, constructed, managed, and financed.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained, the Parties agree as follows:

2.0 SCOPE OF AGREEMENT

2.1 Scope. In compliance with all terms and conditions of this Agreement, Contracting Parties hereby agree to design and rehabilitate Fred Waring Drive, from Washington Street to Deep Canyon Road ("Project"), depicted in Exhibit "A" attached hereto and incorporated herein by reference. The cost of proposed improvements to design and construct the Project is specified in the Project Estimate in Exhibit "B" attached hereto and incorporated herein by reference ("Project Cost"). Parties hereby agree that design and construction of the Project will be publicly advertised for proposals from professional services firms for plans and specifications and publicly bid to construction contractors and subcontractors (collectively referred to herein as "Contractors"), and thus subject to all California laws governing publicly bid projects. Contracting Parties hereby agree that the City of Indian Wells shall be the lead agency regarding the Project and shall be responsible for the public bidding process and completion of all Project components, and that Palm Desert shall reimburse Indian Wells for 40% of the Project Cost, excluding the items in Section 3.2, in accordance with the terms of this Agreement.

- 2.2 Compliance with Law. The Project contemplated herein shall be paid for and constructed in accordance with all ordinances, resolutions, statutes, rules, regulations, and laws of the City and any Federal, State, or local governmental agency of competent jurisdiction.
- 2.3 Wage and Hour Compliance. Contracting Parties shall require all Contractors to comply with applicable Federal, State, and local wage and hour laws for the Project.
- 2.4 Licenses, Permits, Fees and Assessments. Contracting Parties shall require Contractors to obtain such licenses, permits, and approvals as may be required by law for the performance of the Project, and Contractors shall be responsible to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the Project.
- 2.5 Familiarity with Project. Any Contractor shall warrant that they (a) have thoroughly investigated and considered the Project to be performed, (b) have investigated the site where the Project is to be constructed and fully acquainted with the conditions there existing, (c) have carefully considered how the Project should be completed, and (d) fully understand the facilities, difficulties, and restrictions attending completion of the Project.
- 2.6 Additional Services. In accordance with the terms and conditions of this Agreement, Contracting Parties shall fund and construct the Project as depicted in Exhibit "A" herein and the Project Cost in Exhibit "B" herein. If any additional work is required in addition to the work specified in Exhibit "B," ("Additional Work"), Contracting Parties shall not authorize any Contractor to perform such Additional Work until receiving prior written authorization from all Contracting Parties.

Any Additional Services required shall be approved in advance, in writing by both parties and paid for in proportional shares (i.e., 60% for Indian Wells, 40% for Palm Desert,) upon obtaining written authorization for such Additional Services from all Contracting Parties.

If it is determined that a cost overrun exceeding 15% of the construction bid will occur, the Contracting Parties shall endeavor to negotiate in good faith among each other and with any Contractor to agree upon an alternative course of action.

All contract change orders which individually or cumulatively exceed 15% of the bid price as described in Exhibit "B" for the relevant contract bid items shall be submitted to Palm Desert for review and approval prior to authorization by Indian Wells to Contractor.

- 2.7 Responsibility for Operations and Maintenance Following Project Completion. Upon completion of the Project, the Contracting Parties shall assume maintenance responsibilities for the improvements within the respective jurisdictions of the Contracting Parties. Notwithstanding, any agreement(s) in place prior to this Agreement shall remain in full force and effect in accordance with the terms and provisions of those preexisting agreements.

3.0 PAYMENT OF COSTS

3.1 Contract Sum. For the Project contemplated by this Agreement, Contracting Parties shall agree on a combined total price ("Project Cost"), as described in more detail in Exhibit "B." The City of Indian Wells shall contribute 60% of the Project Cost, the City of Palm Desert shall contribute 40% of the Project Cost, subject to the following terms.

Indian Wells shall be responsible for entering into the necessary professional services agreements and public works contracts to complete the project.

For professional service agreements for project design, Palm Desert shall deposit with Indian Wells 40% of the total cost within 30 days of the date of the agreement.

For professional service agreements for construction management, inspection and testing, Palm Desert shall deposit with Indian Wells 40% of the total cost within 30 days of the completion of the project.

For public works contracts, Palm Desert shall, within 30 days of the date of the contract, deposit with Indian Wells 40% of the total cost of the contract.

Any Additional Services required shall be paid for in proportional shares pursuant to Section 1.6.

4.0 COORDINATION OF WORK

4.1 Representative of Contracting Party. The following principals of Contracting Party ("Representatives") are hereby designated as being the representatives of each Contracting Party authorized to act in its behalf with respect to the Project specified herein and make all decisions in connection therewith:

Ken Seumalo, P.E.
Public Works Director
City of Indian Wells
E-mail: kseumalo@indianwells.com

Randy Chavez
Director of Public Works
City of Indian Wells
Email: rchavez@palmdesert.com

The foregoing Representatives shall be responsible during the term of this Agreement for directing all activities of their respective Contracting Party. For purposes of this Agreement, the foregoing Representatives may not be changed without the approval of all Contracting Parties, which approval shall not be unreasonably withheld or denied.

4.2 Contracting Party Responsibilities. In furtherance of this Agreement, and as the

lead agency for the Project, Indian Wells hereby agrees to complete the following tasks in addition to its responsibility to pay 60% of the Project Cost.

- (a) To prepare Plans, Specifications and Estimates (PS&E) for the Project. PS&E shall be prepared in accordance with the standards and practices of Indian Wells and all applicable laws and regulations. Plan sheets for Palm Desert portions shall be prepared in accordance with the standards and practices of the City of Palm Desert.
- (b) To prepare final design documents and drawings for the Project by or under the direction of a Civil Engineer registered and licensed in the State of California. Such specifications, plans and reports shall bear the professional seal, certificate and signature of the professional engineer responsible for their preparation. To provide Palm Desert a copy of the low bid received for the project to review and approve. Palm Desert shall notify Indian Wells in writing of approval or comments within 10 days of receipt of the low bid package. Approval of the low bid shall not be unreasonably withheld or denied. Failure by Palm Desert to submit written comments timely within 10 days of receipt shall be deemed an approval of the low bid and all related bid documents.
- (c) To apply for a no fee encroachment permit for work within the Palm Desert street rights-of-way, in accordance with Palm Desert standard permit procedures; provided however, that Palm Desert agrees to cooperate in the issuance of any other required permits necessary for the Project.
- (d) To administer public works contract change orders for construction, construction management and inspection of the Project.
- (e) To retain or cause to be retained for audit by Palm Desert for a period of three (3) years from the date of final payment, all records and accounts relating to construction of the Project.
- (f) Upon completion of the Project, to furnish Palm Desert a complete set of full-sized reproducible "Drawing of Record" plans.
- (g) Within sixty days of completion of the Project, provide a final accounting of the Project and invoice (or refund) to Palm Desert for the Contracting Agency's portion of the Project Cost.
- (h) In construction of the Project, Indian Wells will furnish or contract for a representative to perform the function of "Resident Engineer," and Palm Desert hereby reserves the right to provide a representative to assist the Resident Engineer. Should Indian Wells contract for a Resident Engineer, the parties shall interview candidates, and the candidate selected to serve as Resident Engineer shall be approved by the parties. Representatives from Palm Desert may consult with Indian Well's Resident Engineer; however, Indian Wells' Resident Engineer's decision shall be considered final.

Palm Desert hereby agrees to issue, free of charge, upon application by Indian Wells or any employee, agent, or contractor of Indian Wells, the necessary encroachment permits for required work within the Contracting Party's Street right-of-way associated with the Project.

4.3 Independent Contractor. The Parties hereby acknowledge that neither Contracting Parties nor any employees of Contracting Parties shall have any control over the manner, mode, or means by which Contractor and its agents and employees perform the services contemplated in the Project Cost, except as otherwise set forth herein. Contracting Parties shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing the Services for the Project hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services for the Project shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by Contracting Parties, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of. Contracting Parties and entitlement to any contribution to be paid by Contracting Party for employer contributions and/or employee contributions for PERS benefits.

5.0 INDEMNIFICATION

5.1 Indemnification by Indian Wells. Indian Wells agrees to indemnify, defend and hold harmless Palm Desert, and their respective officials, officers, agents and employees from and against liability, expenses (including reasonable attorneys' fees), losses, suits and actions, and for damages relating to suits and actions (including bodily injury, death, personal injury, or property damage) arising from Indian Well's performance or failure to perform under this Agreement, except to the extent such liability, expenses, losses, and damages are caused by the negligence or willful misconduct of Palm Desert, in their respective comparative amounts as established by a court of competent jurisdiction or otherwise stipulated by the Contracting Parties.

5.2 Indemnification by Palm Desert. Palm Desert agrees to indemnify, defend and hold harmless Indian Wells, and their respective officials, officers, agents and employees from and against liability, expenses (including reasonable attorneys' fees), losses, suits and actions, and for damages relating to suits and actions (including bodily injury, death, personal injury, or property damage) arising from Palm Desert's performance or failure to perform under this Agreement, except to the extent such liability, expenses, losses, and damages are . caused by the negligence or willful misconduct of Indian Wells, in their respective comparative amounts as established by a court of competent jurisdiction or otherwise stipulated by the Contracting Parties.

5.3 Indemnification from Contractor. Contracting Parties shall require each and every Contractor performing work for the Project to indemnify, defend, and hold harmless, to the maximum extent allowable by law, the Contracting Parties for that work performed on the Project by the Contractor.

5.4 Insurance from Contractor. Contracting parties shall require each and every Contractor performing work for the Project to procure and maintain policies of insurance typically required for projects of a similar size and scope. All liability policies shall provide, or be endorsed to provide, that each Contracting Party be named additional insured.

6.0 RECORDS AND REPORTS.

6.1 Records. Contracting Parties shall keep such ledgers, books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the Project ("Books and Records") for three (3) years following completion of the Project. Any

and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contracting Parties shall have full and free access to such Books and Records of any other Contracting Party at all times during normal business hours, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records.

6.2 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium prepared or caused to be prepared for the Project (the "Documents and Materials") shall be the joint property of all Contracting Parties. Any Contracting Party shall be entitled to use or reuse such completed Documents and Materials for other projects and/or use uncompleted documents for any purpose.

7.0 ENFORCEMENT OF AGREEMENT.

7.1 California Law. This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contracting Parties covenant and agree to submit to the personal jurisdiction of such court in the event of such action.

7.2 Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the remaining Contracting Parties in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten(10) days of service of such notice and completes the cure of such default within forty-five (45) days after service of the notice or as soon thereafter as practicably may be accomplished, provided that if the default is an immediate danger to the health, safety, or general welfare, the injured party may take such immediate action as deemed warranted. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

7.3 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Contracting Parties' consent or approval of any act by any other Contracting Party requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act of Contracting Party. Any waiver by any Contracting Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.4 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 Contracting Parties are cumulative and the exercise by any party of

one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

7.5 Legal Action. In addition to any other rights or remedies, any party may take legal action, at law or at equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.6 Attorneys' Fees. If any Contracting Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by such Contracting Party for legal services multiplied by the reasonable number of hours spent by the prevailing party in the conduct of the litigation. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

8.0 CITY OFFICERS AND EMPLOYEES: NONDISCRIMINATION.

8.1 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of any Contracting Party shall be personally liable to any Contracting Party, or any successor in interest, in the event of any default or breach by any Contracting Party or for any amount which may become due to Contracting Party or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Contracting Parties covenant that neither Contracting Parties, nor any officer or principal thereof, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of Contracting Parties or which would in any way hinder Contracting Parties' performance of this Agreement. Contracting Parties agree to at all times avoid conflicts, of interest or the appearance of any conflicts of interest in the performance of this Agreement.

No officer or employee of any Contracting Party shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any local or State statute or regulation.

8.3 Covenant against Discrimination. Contracting Parties covenant that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not

limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Agreement. Contracting Parties shall take affirmative action to ensure employees and Contractor's employees and agents are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

9.0 MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, consent, approval, or communication any Party desires or is required to give to any other Party shall be in writing and either served personally or sent by prepaid, first-class mail to the address set forth below.

Any Party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

To City of Indian
Wells: CITY OF
INDIAN WELLS
Attention: City
Manager
44-950 Eldorado Drive
Indian Wells, CA
92210

To City of Palm
Desert: CITY OF
PALM DESERT
Attention: City Manager
73510 Fred Waring
Drive Palm Desert, CA
92260

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

9.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument

9.5 Integrated Agreement. This Agreement including the exhibits hereto is the entire, complete, and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous

negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

9.6 Amendment. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by all Contracting Parties. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.7 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives any Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.8 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

9.9 Authority. The persons executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

CITY OF INDIAN WELLS,
a California Municipal Corporation

Christopher J. Freeland
City Manager

ATTEST:

Angelica Avila
City Clerk

APPROVED AS TO FORM:

Best, Best & Krieger LLP
City Attorney

FOR

CITY OF PALM DESERT,
a California Municipal Corporation

Print Name:
City Manager

ATTEST:

Print Name:
City Clerk

APPROVED AS TO FORM:

Print Name:
City Attorney

Exhibit A

Project Improvement Map

Exhibit B
Cost Estimate