



Coachella Valley Mosquito
and
Vector Control District

43420 Trader Place
Indio, CA 92201
Phone (760) 342-8287
www.cvmosquito.org

Study Session of the Board of Trustees

Tuesday, November 12, 2019

5:00 p.m.

AGENDA

Assistance for those with disabilities: If you have a disability and need accommodation to participate in the meeting, please call the Clerk of the Board at (760) 342-8287 for assistance so the necessary arrangements can be made.

1. **Call to Order** – Doug Hassett, President
2. **Roll Call**
3. **Confirmation of Agenda**
4. **Public Comments**

Public Comments

Those wishing to address the Board should complete a Public Comment Card and provide it to the Clerk of the Board.

Non-Agenda Items: Persons wishing to address the Board on subjects other than those scheduled are requested to do so at this time. When addressing the Board, please come to the podium and give your name and address for the record. In order to conduct a timely meeting, a three-minute time limit per person has been established. California Government Code Section 54950 prohibits the Board from taking action on a specific item until it appears on the agenda.

Agenda Items: Comments should be made when the agenda item is called. Each presentation is limited to no more than three minutes.

5. Review and Discuss CV Link Project, Concerns, and Proposed MOU between the Coachella Valley Mosquito and Vector Control District, Coachella Valley Association of Governments, and the City of Indio.

6. Adjournment

Certification of Posting

I certify that on November 8, 2019, I posted a copy of the foregoing agenda near the regular meeting place of the Board of Trustees of the Coachella Valley Mosquito & Vector Control District and on the District's website, said time being at least 72 hours in advance of the meeting of the Board of Trustees (Government Code Section 54954.2)

Executed at Indio, California, on November 8, 2019.

Graciela Morales, Clerk of the Board

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
INDIO, THE COACHELLA VALLEY ASSOCIATION OF
GOVERNMENTS AND THE COACHELLA VALLEY MOSQUITO AND
VECTOR CONTROL DISTRICT**

This Memorandum of Understanding (“**MOU**”) is dated November ____, 2019 (“Effective Date”), and is by and among the City of Indio, a municipal corporation (“**Indio**” or “**the City**”), the Coachella Valley Association of Governments, a joint powers authority (“**CVAG**”) and the Coachella Valley Mosquito and Vector Control District, a special district, (“**District**”). Indio, CVAG and District may be collectively referred to herein as “**Parties.**”

RECITALS

A. The District is the owner of certain real property located in the City of Indio with Assessor Parcel Numbers 610-070-025 and 610-070-002 and as further depicted in Exhibit “A” (“District Property” or “Property”). In 1998, the District received approval for Parcel Map No. 28725 for the subdivision of the District Property; however, the District never recorded a final map for the District Property.

B. A portion of the Property is improved with the District’s offices and maintenance facilities. The remainder of the Property is vacant and improved with certain rights-of-way known as Trader Place and Oleander Avenue and are further delineated in Exhibit “A” (collectively the “District Streets”). Because the District never recorded a final map, these segments of Trader Place and Oleander Avenue were never dedicated to the City.

C. CVAG is implementing a segment of an alternative transportation project known as “CV Link” within the boundaries of the City. CV Link is a 50-mile path that will ultimately link the Coachella Valley from Palm Springs to the Salton Sea. Along the path, there are access points connecting the CV Link path to public streets. The City has learned that an access easement is needed to connect CV Link to Trader Place in the City. That portion of Trader Place, however, was never dedicated to the City and remains property of the District.

D. In order to facilitate the implementation of the CV Link segment in the City, the Parties have agreed to work together through this MOU to facilitate a public access easement on the District’s Property between the CV Link pathway

and Trader Place (“Easement” or “Public Access Easement”), in the form attached hereto as Exhibit “B”. The proposed Easement shall be granted directly to CVAG.

E. In order to connect the CV Link pathway to City streets via the Easement, the District is required to offer to dedicate the District Streets to the City and the City is required to accept the offer of dedication of the District Streets as public rights-of-way.

F. The Parties agree to take all actions necessary to accomplish the purposes described in the above Recitals.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Memorandum of Understanding, and other good and valuable consideration the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties hereby agree as follows:

Section 1. Incorporation of Recitals. The recitals set forth above and hereby incorporated and made a part of this MOU.

Section 2. Public Access Easement.

A. Subject to the obligations of the Parties set forth herein, District hereby grants to CVAG and CVAG’s successors and assigns the Public Access Easement.

B. The Parties agree that the Public Access Easement shall be recorded concurrently with the City’s acceptance of the offer of dedication and receipt of funding described in Section 7 to take place no later than March 15, 2020 (“Outside Date”). In the event that the actions contemplated by this Section 2.B have not taken place by the Outside Date, any one of the Parties may send written notice to the other Parties containing a clear reference to the default of the Outside Date obligation and reference to this subsection. If such default is not cured by the obligated Party within thirty (30) days of receiving the written notice this MOU shall terminate and the Parties shall have no further obligations to one another under this MOU.

C. CVAG shall construct a fence on the Public Access Easement similar in construction and design to the fence that is currently surrounding the improved portion of the District Property to separate the Public Access Easement property

from the remaining District Property. District will provide its cooperation to enable the construction of the fence by CVAG, including providing access to the District Property. The Parties have discretion to determine the mechanics of the installation of the fence (i.e. the timing of installation, etc.). CVAG will be solely responsible for all costs associated with the construction of the fence.

Section 3. Retaining Wall and Standpipes. CVAG, at its sole cost and expense, will remove the concrete standpipes that are shown on Exhibit “C” and install a retaining wall upon on the Public Access Easement or the property adjacent to the District Property (if such retaining wall is required to comply with code) contemporaneously with the construction of the fence. The design of the retaining wall will be submitted in advance by CVAG to the District for approval. The District will have fifteen (15) business days to comment on the design and CVAG will reasonably accommodate any structural, aesthetic or other concerns that the District may have. If the District does not submit written comments to CVAG within this period, then the design will be deemed approved. CVAG shall be required to obtain permits from the City of Indio building department for the installation of the retaining wall.

Section 4. Subdivision of Existing Parcel. The Parties understand that it is the intent of the District to file an application with the City of Indio for the subdivision of the District Property by a parcel map (“Parcel Map”). The City shall review the Parcel Map expeditiously and in good faith. The District desires to subdivide the District Property so that the improved portion with the District’s offices and maintenance facilities becomes its own separate legal lot (“New District Parcel”) and the remainder of the District Property that is vacant and contains the District Streets becomes its own separate legal lot or lots, as determined by District (“Remainder Property”) and becomes available for sale prior to the installation of improvements called for in Section 5. In lieu of requiring payment and performance bonds to secure the improvements required by the Parcel Map and related subdivision improvement agreement, the City will agree to accept lien contracts as allowed by the Subdivision Map Act to be imposed against the Remainder Property provided that performance and payment bonds shall be obtained by the developer at the time a building permit for the Remainder Parcel or part thereof is issued.

Section 5. Remainder Property Improvements. The District shall include in any purchase and sale agreement for the Remainder Property a provision that any proposed purchaser, or its successors and assigns, is required to complete the remaining improvements on the District Streets, which includes but are not

limited to, the installation of sidewalks, placement of survey monuments, repair of existing improvements (concrete curb and gutter, etc.) (collectively “Street Improvements”), as required by a covenant running with the land (“Covenant”) to be placed on the Remainder Property so that any subsequent purchaser, or its successors and assigns, is obligated to perform the Street Improvements.

The District shall provide to the City the proposed Covenant to be attached to the purchase and sale agreement for its review and approval prior to the approval of the Parcel Map and a detailed list of the required Street Improvements prepared by the City Engineer in compliance with applicable law and the time-frame for the completion of said improvements which shall be immediately prior to the issuance of a building permit. Upon completion of the Street Improvements, the City shall provide the owner of the Remainder Property with a certificate of completion and record an unconditional release of the Covenant.

Section 6. Covenant and Conditions. In order to effectuate the intent and purpose of Section 5 of this MOU, the District agrees to cooperate with the City to cause to be recorded on the Remainder Property the Covenant at the time of recording the final Parcel Map. In addition, as part of the approval of the Parcel Map, the City shall cause to be placed a condition to effectuate the intent and purpose of Section 5 of this MOU with regard to the Street Improvements requirement. The District agrees it may not take any action to contest such condition so long as it is consistent with this Agreement.

Section 7. Dedication of District Streets.

A. The District shall take all actions necessary to dedicate the District Streets to the City for the City’s acceptance. The City shall cause the acceptance of the District Streets in conformance with applicable state laws concurrent with recordation of the Public Access Easement.

B. Concurrent with the City’s acceptance of the offer of dedication, CVAG shall provide to City the sum of Ninety Thousand Dollars (\$90,000) to be used by the City for upfront needed maintenance improvements to the District Streets (i.e. grind and overlay). The City shall not be obligated to accept the District Streets until the funding from CVAG has been received.

Section 8. Waiver of Fees. The City agrees to waive City fees related to the dedication of the District Streets and the City’s acceptance of said streets.

Section 9. Renaming of Street. The City agrees to assist the District with renaming the street on which its offices and maintenance facilities are located is named Trader Place, to the extent that the street naming process allows. Such process includes the review and approval by the Police and Fire Departments to ensure that public safety response is not compromised. Generally street names are approved as part of the filing for a final map and therefore, this may be part of the conditions placed on the approvals for the proposed subdivision application.

Section 10. Cooperation of Parties. The District and City hereby authorize their respective officers (i.e. General Manager for the District and City Manager for the City) to take all acts necessary to implement the terms of this MOU including the authority to execute all documents necessary to complete the transactions contemplated herein.

Section 11. Term of MOU. The term of this MOU shall commence on the date first written above and shall terminate when all of the Parties' respective obligations hereunder have been performed.

Section 12. Legally Binding Obligations. Upon execution of this MOU, the Parties understand and agree that the obligations hereunder shall be deemed to create legally binding obligations.

Section 13. Time of the Essence. Time is of the essence regarding this MOU.

Section 14. Authority. Each signatory of this MOU represents that they are dully authorized to execute this MOU on behalf of the Party for which such signatory executes this MOU. Each Party represents that it has the appropriate legal authority to enter into this MOU and to perform all obligations under this MOU.

Section 15. Jurisdiction and Venue. This MOU shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action or proceeding brought under the scope of this MOU shall be brought and maintained to the extent allowed by law in the County of Riverside, California.

Section 16. Construction and Interpretation. This MOU has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this MOU. As a result, the normal rule of construction that any

ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this MOU.

Section 17. Entire Agreement. This MOU constitutes the entire agreement of the Parties with respect to the subject matter of this MOU and supersedes any and all prior oral or written agreement, understanding, or representation relating to the subject matter of this MOU.

Section 18. Successors and Assigns. This MOU shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this MOU. No Party may assign its interests in or obligations under this MOU without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

Section 19. Remedies Not Exclusive. No remedy conferred by any of the specific provisions of this MOU is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

Section 20. Waivers. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU and forbearance to enforce one or more of the remedies provided in this MOU shall not be deemed to be a waiver of that remedy.

Section 21. Compliance with Law. In performing their respective obligations under this MOU, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

Section 22. Notices. All notices, requests, demands or other communications required or permitted under this MOU shall be in writing unless provided otherwise in this MOU. Notice shall be deemed to have been duly given and received on: (i) the date of service if served personally on the Party to whom notice is to be given at the address or addresses as provided below, (ii) the first day after mailing, if mailed or dispatched by Federal Express, United States Express Mail, or other similar overnight courier service, postage prepaid and addressed as provided below, or (iii) the third (3rd) business day after mailing if mailed to the

Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

To Indio: City of Indio
City Manager
100 Civic Center Mall
Indio, California 92201

To District: Coachella Valley Mosquito and Vector Control
District
General Manager
43420 Trader Place
Indio, California 92201

To CVAG: Coachella Valley Association of Governments
General Manager
73710 Fred Waring Dr #200,
Palm Desert, CA 92260

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first written above.

INDIO:

CITY OF INDIO

By: _____
Mark Scott, City Manager

ATTEST:

By: _____

Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:

By: _____
Roxanne Diaz, City Attorney

DISTRICT:

COACHELLA VALLEY
MOSQUITO AND VECTOR
CONTROL DISTRICT

By: _____
Jeremy Wittie, M.S, General
Manager

ATTEST:

By: _____
Graciela Morales, District Clerk
of the Board

APPROVED AS TO FORM:

By: _____
Lena D. Wade, Esq. District
General Counsel

CVAG:

COACHELLA VALLEY
ASSOCIATION OF
GOVERNMENTS

By: _____
Tom Kirk, General Manager

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP

EXHIBIT "A"

DISTRICT PROPERTY

(Attached.)

EXHIBIT "B"

Recording requested by and when recorded, return to:

Coachella Valley Association
Of Governments
Attn: Martin Magana
73-710 Fred Waring Drive
Palm Desert, CA 92260

APN(s): 610-070-025 and 610-070-002 (portions)

No recording fee per Government Code § 6103
No Documentary Transfer Tax per Revenue and
Taxation Code § 11922

EASEMENT DEED

(CV Link Multi-Modal Transportation Corridor Project)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, COACHELLA VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT, a special district (hereinafter referred to as "Grantor") does hereby grant to the COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS, a joint powers authority created under the laws of the State of California (hereinafter referred to as "Grantee"), its successors and assigns, a perpetual exclusive easement and right of way for a multipurpose public path ("Project"), including riding, walking, jogging, running, biking, electric vehicles and similar uses in, on, over and across that portion of Grantor's property ("Grantor's Property") that is legally described in Attachment "A", which is attached hereto and by this reference incorporated herein, and graphically depicted on Attachment "B", which is attached hereto and by this reference incorporated herein (collectively, the "Easement"). The Easement is subject to the following terms and conditions:

1. The purpose of the Project and the Easement is to (i) foster mobility within the Coachella Valley, (ii) promote public health and wellness through exercise and the use of different modes of transportation, (iii) ensure public safety by providing a dedicated path for such modes of transportation, (iv) enhance mobility and accessibility for disadvantaged individuals, and (v) provide environmental benefits such as improved air quality and reduced carbon emissions from the use of different modes of transportation.

2. The Easement will include the right of Grantee to access, construct and maintain a paved path within the area described on Attachment B, as well as utility installations, lighting, rest areas, exercise stations and such other facilities as are reasonable or desirable for the public use of the Project. Grantee shall be solely responsible for the construction, operation, maintenance and use of the Project facilities within the area described on Attachment B.

3. (a) In consideration of the grant of the Easement, Grantee hereby agrees to indemnify, defend and hold harmless Grantor, its directors, officers, employees, agents, successors and assigns (the "Indemnified Parties") from and against all "Damages," as defined in sub-section (c) below, that may be imposed on, incurred by, or asserted against the Indemnified Parties as a result of (i) any damage to Grantor's Property as a result of the activities of Grantee or any invitee, including Desert Healthcare District, while present on the Easement or the Property or in connection with the construction and installation of the Project; (ii) any negligent act or omission of Grantee, its employees, agents and contractors, occurring on or about the Grantor's Property; or (iii) any claim by a member of the public that alleges that such party incurred Damages while making use of the Project or the Grantor's Property, including without limitation, damage to personal property or any death or bodily injury. The foregoing indemnity will not apply to the extent that Damages were caused by (x) an affirmative act of the Indemnified Parties that is negligent and was the proximate cause of an injury; or (y) the intentional misconduct of the Indemnified Parties. Furthermore, it is not intended that any third party have the right to claim it is a beneficiary of the indemnity obligations of Grantee hereunder.

(b) If any of the Indemnified Parties have sovereign immunity or immunity as a public agency, including Grantee, with respect to any claim for Damages alleged by a third party, then the indemnity obligation of Grantee will be limited to asserting such immunity from claims in cooperation with the Indemnified Parties pursuant to sub-section (d) below and in no event will this indemnity be interpreted as a waiver or release of such immunity.

(c) As used herein, "Damages" shall mean all actual and direct liabilities, demands, claims, actions or causes of action, regulatory, legislative or judicial proceedings, assessments, levies, losses, fines, penalties, damages, costs and expenses, in each case as awarded by a court or arbitrator, including without limitation, reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability.

(d) Promptly following receipt of any written claim or legal proceeding asserted by a person or entity who is not a party to this Easement Deed (a "Third-Party Claim"), the Indemnified Parties shall notify Grantee of such claim in writing. Grantee shall have a period of 30 days (or such lesser period as may be required to timely respond to a Third-Party Claim) following the receipt of such notice to assume the defense thereof and Grantee shall thereafter undertake and diligently pursue the defense of the Third-Party Claim. Grantee shall reimburse Indemnified Parties for any legal expense reasonably incurred by Indemnified Parties to timely respond to a Third-Party Claim prior to Grantee assuming the defense thereof. Grantee shall not consent to entry of judgment or enter into any settlement agreement, without the consent of the Indemnified Parties, that does not include a complete and unconditional release of the Indemnified Parties or that imposes injunctive or other equitable relief against the Indemnified Parties. The Indemnified Parties shall be entitled to participate in, but not control, the defense thereof, with counsel of their choice and at their own expense. If Grantee fails to assume and diligently pursue the defense of such Third-Party Claim, the Indemnified Parties may defend against such Third-Party Claim in such manner as they may deem appropriate, including without limitation settlement thereof on such terms as the Indemnified Parties may deem

appropriate, and to pursue such remedies as may be available to the Indemnified Parties against Grantee. Notwithstanding the foregoing, the Indemnified Parties shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of Grantee that does not include a complete and unconditional release of Grantee.

4. Grantee shall maintain commercial general liability insurance or with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and \$2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Grantee shall submit to District a valid certificate of insurance in favor of District, its Board, officers, agents, employees and volunteers at all times.

5. Grantee will have the right to grant a non-exclusive easement to Desert Healthcare District for the use of the Easement for the purpose of using the Easement for public access related to public health and wellness. In addition to any rights that Grantee may have at law or equity to enforce the terms of this Easement, in the event that Grantee fails to enforce the terms of this Easement as necessary for public benefit and use of the Project, then the public agencies and entities that have provided funding for the Project as of the date of this Easement Deed shall have the right, individually or collectively, to enforce the provisions of this Easement Deed for the benefit of the public.

6. Grantee shall be obligated to maintain the Easement, the Project and all improvements on the Easement including but limited to the path, fence and lighting at all times in a neat, clean, functional and improved condition and used solely for the purposes set forth herein, and shall not allow the same to fall into neglect or disrepair, failing which shall cause the Easement to be terminated and of no further force or effect, with full right, title and interest restored to Grantor.

[signature page follows]

Grantor hereby executes this Deed of Easement as of the date set forth below.

Date: _____

GRANTOR:

COACHELLA VALLEY MOSQUITO AND
VECTOR CONTROL DISTRICT, A SPECIAL
DISTRICT

By: _____
Name: _____
Title: _____

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 _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/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.

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 of Notary

EXHIBIT "C"

DIAGRAM SHOWING LOCATION OF STANDPIPES

Exhibit "A"
District Property

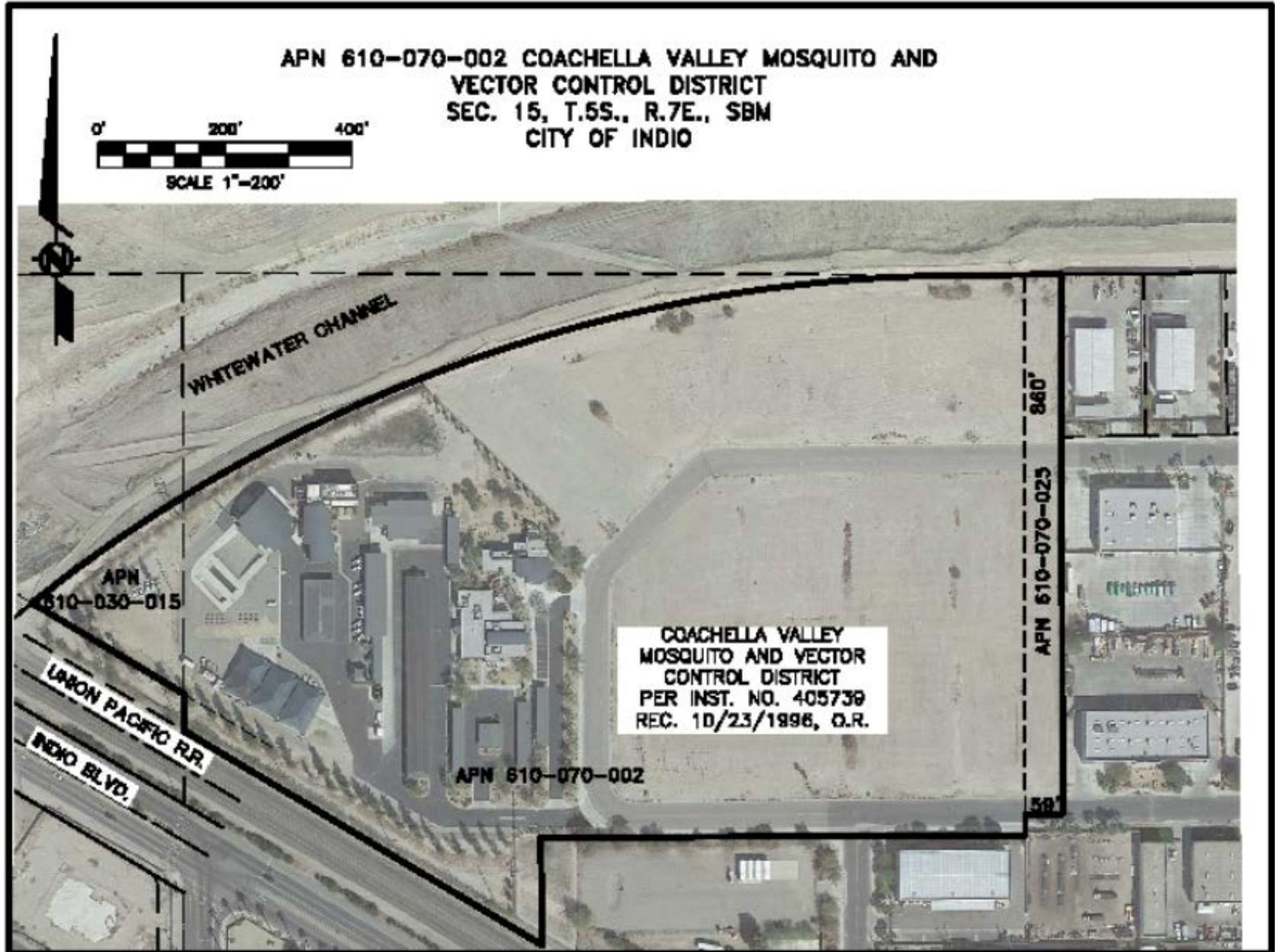
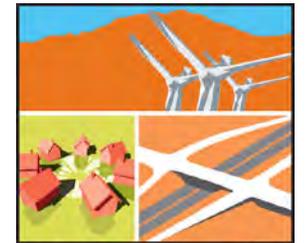


EXHIBIT B CV LINK EASEMENT



Legend

-  CV LINK
-  CV Link Easement
-  Parcels
-  Streets



CVAG

CVLINK
CONNECTING THE COACHELLA VALLEY

