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Z Attachment 5

APPENDIX 5

CITY OF PALM SPRINGS / AGUA CALIENTE BAND OF CAHUILLA INDIANS LAND USE CONTRACT Amended and Restated

This Land Use Contract (“**Contract**”) is made, entered into and effective this 17th day of October, 2018, by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe acting through its duly constituted Tribal Council (the “**Tribe**”) and the City of Palm Springs, a California charter city and municipal corporation (the “**City**”).

RECITALS

A. The Tribal Council of the Agua Caliente Band of Cahuilla Indians (the “**Tribal Council**”) is entering into this Contract and now acts pursuant to the inherent sovereign authority of the Tribe, and Article V, paragraphs a, b, i, l, and r, of the Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians (the “**Constitution**”).

B. For purposes of this Contract, “**real property**” shall mean the land, that which is affixed to the land, that which is incidental or appurtenant to the land, and that which is immovable by applicable law. The Tribe is a federally recognized Indian tribe with the sole authority to regulate land use within the exterior boundaries of the Agua Caliente Indian Reservation (“**Reservation**”) on:

1. Real property owned by any member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or real property owned by a member of any other federally recognized Indian tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States (collectively, “**Allotted Trust Lands**”); and
2. Real property owned by the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States (“**Tribal Trust Lands**”); and
3. Real property not held in trust by the United States owned by members, or by non-members who have entered into consensual relationships with the Tribe or who undertake activities that affect the political integrity, the economic security, or the health or welfare of the Tribe (“**On-Reservation Fee Lands**”).

C. The City is a charter city and municipal corporation formed pursuant to California law, which serves as an instrument of self-government for the residents within its geographical boundaries (“**City Limits**”), and is authorized pursuant to the California Constitution to make and enforce within City Limits all local, policy, sanitary, and other ordinances and regulations not in conflict with the City’s charter and applicable general laws.

D. The Tribe, as a sovereign tribal government, has the authority to establish and impose its own land use controls (e.g., general plan, zoning, environmental review, building standards, and permits) within its jurisdiction, including on the Allotted Trust Lands of the Reservation. The Tribe, however, has chosen to coordinate its land use actions with those of the City and surrounding communities as a means of promoting the highest and best use of those Allotted Trust Lands and adjacent off-Reservation lands within City Limits and throughout the region.

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E. The City desires to provide a high level of planning, public safety, and other municipal services to all residents and businesses within City Limits. The City believes that Allotted Trust Lands within City Limits should equally benefit from consistent planning, public safety, and other municipal services.

F. On July 26, 1977, the Tribe and the City entered into that certain Agreement (the “**1977 Land Use Agreement**”) whereby:

1. The Tribe agreed to adopt all of the City’s land use regulations as its own and apply them to the trust lands of the Reservation located within the City, and
2. The Tribe agreed to designate the City to be and to act as the Tribe’s agent to enforce those land use regulations on the trust lands of the Reservation, and
3. The parties agreed to an appeal procedure, and
4. The City accepted these responsibilities.

G. On August 5, 1977, in accordance with the 1977 Land Use Agreement, the Tribe enacted Tribal Ordinance No. 4 entitled “Ordinance Adopting the Application of the Planning and Zoning Regulations of the State of California and the City of Palm Springs to Indian Trust Land within Said City.” Ordinance No. 4 adopts and applies, as the Tribe’s own laws, all of the laws, ordinances, codes, resolutions, rules, and other regulations of the State and of the City which control the use and/or development of all of the Allotted Trust Lands within City Limits.

H. On March 20, 1978, the Tribe and the City entered into that “**Supplemental Agreement No. 1**” to the 1977 Land Use Agreement in order to prescribe details regarding appeals by persons aggrieved by planning and zoning actions.

I. On February 4, 1987, the Tribe and the City entered into that “**Supplement No. 2**” to the 1977 Land Use Agreement to amend the 1977 Land Use Agreement to address recitals required by 25 U.S.C. §81.

J. The Tribe and the City received retroactive approval of the 1977 Land Use Agreement and Supplemental Agreement No. 1 thereto on May 18, 1987, from the Assistant Secretary of Indian Affairs.

K. On January 5, 1995, the Tribe and the City entered into that “**Supplement No. 3**” to the 1977 Land Use Agreement to exempt certain parcels of land from the 1977 Land Use Agreement.

L. On July 27, 1995, the Tribe and the City entered into that “**Supplement No. 4**” to the 1977 Land Use Agreement to exempt certain parcels of land from the 1977 Land Use Agreement.

M. On February 3, 1999, the Tribe and the City entered into that “**Supplement No. 5**” to the 1977 Land Use Agreement to automatically remove parcels of land from the scope of the 1977 Land Use Agreement as the Tribe acquires title to them.

N. This Contract supersedes all prior agreements regarding land use between the Tribe and the City, including the 1977 Land Use Agreement and all supplements and amendments thereto, in their entirety.

O. As provided herein, the Tribe and the City continue to desire to have uniform and unified land planning and land use administration for Allotted Trust Lands located within City Limits.

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NOW, THEREFORE, in consideration of the mutual conditions and promises contained herein, and based on the recitals set forth above and the acknowledgments set forth below, the parties recognize that it is in their mutual best interest and benefit to agree as follows.

TERMS OF AGREEMENT

1. **Term.** The term of this Contract shall commence on the date of its execution by both the Tribe and the City until terminated as provided herein or superseded.
2. **Effective Date.** This Agreement shall be effective on the date first written above.
3. **Tribal Land Use Control Ordinance.** Tribal Ordinance No. 51, “Local Government Land Use Ordinance” remains in effect as amended, renumbered, or re-designated from time to time.
4. **Scope.** This Contract shall only apply to Allotted Trust Lands within City Limits, except as provided herein, and shall not apply to Tribal Trust Lands. The Tribe reserves its inherent sovereign authority to regulate land use on Allotted Trust and Tribal Trust Lands. Nothing contained herein shall be construed or interpreted as a waiver of the Tribe’s inherent sovereign authority to regulate land uses on said lands.
5. **On-Reservation Fee Lands.** Nothing set forth herein shall be construed or interpreted to waive or impair the City’s authority to adopt and enforce land use regulations applicable to On-Reservation Fee Lands; provided, however, the Tribe may assert concurrent jurisdiction to adopt and enforce land use regulations applicable to On-Reservation Fee Lands when as may be authorized under the holding of *Montana v. United States* (1981), 450 U.S. 544¹, and all applicable federal law or agreement of the parties.
 - 1 A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” (*Montana v. United States* (1981), 450 U.S. 544, 565-566) (*internal citations omitted*).
6. **Content of the Tribal Land Use Control.** For Allotted Trust Lands within City Limits, as City Limits exist now or may exist in the future, the applicable comprehensive set of land use controls shall consist of all land use related ordinances, resolutions, and similar enactments of the City and the related statutes required to be administered by the City as noted below.

The aforementioned comprehensive set of land use controls shall, unless limited herein, include:

- (a) General plans and specific plans;
- (b) Zoning laws and regulations;
- (c) Laws and regulations that authorize an owner of real property to deviate from development standards otherwise applicable to the property (i.e., variances);

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- (d) Laws and regulations that authorize particular uses of real property subject to conditions not generally applicable to real property similarly zoned (i.e., conditional use and other similar permits);
- (e) Subdivision laws and regulations;
- (f) Building, grading, and other laws and regulations related to the construction and occupancy of buildings;
- (g) Design review laws and regulations;
- (h) Environmental laws and regulations – except as pre-empted by the National Environmental Policy Act (NEPA);
- (i) Outdoor advertising displays, excepting Tribal Trust Lands and Allotted Trust Lands;
- (j) Code enforcement or code compliance; and
- (k) Matters directly related to the above, except as noted in Paragraph 8 below.

The Tribe and the City each reserve the right to seek an amendment to this Contract altering any of the above at any time.

7. **Designation of City as Tribe's Agent.** The Tribe designates and engages the City to be and to act as the Tribe's agent in the enforcement and administration of the measures described in Paragraph 6 above with respect to Allotted Trust Lands within City Limits, with full authority to act as the Tribe's agent, except as noted in Paragraph 8 below². The purpose of such agency is to ensure that the City will apply and enforce the same development standards and procedures, except as noted herein, within City Limits, whether original jurisdiction lies with the Tribe or the City.

2 The parties understand and agree that the scope and nature of the City's land use authority over and with respect to On-Reservation Fee Lands is addressed above in Paragraph 5, subject only to the Tribe's potential assertion of concurrent jurisdiction as stated therein.

8. **Limitations.**

- (a) **Tribal Trust Lands.** This Contract shall not apply to Tribal Trust Lands.
- (b) **Tribal and Federal Law.** This Contract is not intended, and shall not be construed, to permit any violation of Tribal or federal law applicable to Allotted Trust Lands, Tribal Trust Lands, and On-Reservation Fee Lands within City Limits (e.g., Tribal Ordinance No. 13, Tribal Ordinance No. 50, and the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq.).
- (c) **Outdoor Advertising (Billboards).** This Contract is not intended, and shall not be construed, to exempt any person with a beneficial interest in Allotted Trust Land or any person occupying or in possession of Allotted Trust Land from the requirements of Tribal Ordinance No. 13, "Outdoor Advertising Displays," as amended, renumbered, or re-designated from time to time. By its execution of this Contract, the Tribe does not designate the City as the Tribe's enforcement agent for Tribal Ordinance No. 13. The Tribe will enforce the Ordinance itself. The Tribe agrees to notify the City of any permits issued by the Tribe for new outdoor advertising displays within City Limits.

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- (d) **Historic Preservation.** This Contract is not intended, and shall not be construed, to: (i) delegate the functions of the State Historic Preservation Officer that the Tribe assumed with respect to “tribal land,” as that term is defined in 54 U.S.C. § 300319, pursuant to that certain Agreement Between the National Park Service, U.S. Department of the Interior and the Agua Caliente Band of Cahuilla Indians for the Assumption by the Tribe of Certain Responsibilities Pursuant to the National Historic Preservation Act (16 U.S.C. 470) dated September 15, 2005 (“2005 NHPA Agreement”), in accordance with Section 101 of the National Historic Preservation Act, 54 U.S.C. §§ 300101 et seq., and applicable implementing regulations at 36C.F.R. Part 60 and Part 800, as such laws and regulations may be amended, renumbered, or re-designated from time to time; or (ii) delegate the Tribe’s sole authority to review and approve the designation of Heritage Properties (defined below) on Allotted Trust Lands; or (iii) delegate the Tribe’s sole authority to handle, manage, or control Cultural Resources (defined below) on Allotted Trust Lands. For purposes of this Contract, the terms “Heritage Property” and “Cultural Resource” shall have the meaning ascribed to them in Tribal Ordinance No. 37, “Tribal Historic Preservation Ordinance,” as amended, renumbered, or re-designated from time to time.
 - (e) **Initiatives and Referenda.** This Contract is not intended, and shall not be construed, to apply to land use controls or any other law adopted or repealed through the initiative process authorized pursuant to section 8(a) of article II of the California Constitution or the referenda process authorized pursuant to section 9(a) of article II of the California Constitution, whether such initiative or referendum is adopted or repealed by the City, through its City Council, or by a majority vote of the electorate. In the event a land use control is adopted or repealed through the initiative or referenda process, the Tribe and City agree to meet and confer within a reasonable time after adoption or repeal to evaluate whether the newly adopted or repealed land use control shall apply to Allotted Trust Lands and how the newly adopted or repealed land use control shall be implemented.
9. **Consideration.** The Tribe, for the benefit of the community and in order to assure the highest level of planning and development and in consideration of providing the above services, hereby permits the City to collect and retain all fees as they now exist or may exist in the future which provide direct compensation to the City for its actual costs in carrying out its duties as the Tribe’s agent, subject to the limitations described herein.
10. **Fees for Development Projects.**
- (a) As used herein, “**development fee**” means a monetary exaction, other than a tax or special assessment, which is charged by the City to the property owner or developer or lessee in connection with approval of a development project for the purpose of defraying all or a portion of the costs of public services and community amenities resulting from the development project, whether imposed by a legislative action of the City pursuant to the Mitigation Fee Act (California Government Code sections 66000 – 66025) or on an ad hoc basis, but does not include fees for the processing of City regulatory actions or approvals as described in Paragraph 6, or fees that are established and imposed through a development agreement or other contract entered into by and between the City

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and the property owner, developer, or lessee. Subject to subparagraph (c) of this Paragraph, the City may impose and collect development fees on developments proposed for Allotted Trust Lands.

- (b) In addition to development fees applicable to development projects in the City, applicants for development may be required to dedicate land as needed, to provide for rights-of-way for public improvements such as streets and drainage for the term of the lease or permanent rights-of-way with the approval of the Secretary of the Interior. The City will provide to the Tribe, as necessary, a list of needed right-of-way dedications on Allotted Trust Lands. Such right-of-way dedications shall not conflict with any federal statutes or regulations regarding road rights-of-way on Indian land, particularly but not limited to 25 U.S.C. §§ 314, 323-325 and 357, and 25 C.F.R. Part 169, as said statutes and regulations may be amended, renumbered, or re-designated from time to time.
 - (c) Following the execution of this Contract, the City shall provide mailed notice to the Tribe of any adoption of any anticipated legislative action to adopt any new development fee or increase any existing development fee, together with a statement justifying such new or increased fee, at least fourteen (14) days prior to adoption. The City shall also consult with the Tribe prior to the adoption of any such new or increased fee, if consultation is requested by the Tribe. Within sixty (60) days after receipt of the notice of adoption of such new or increased fee, the Tribe may take formal action to specifically decline to apply to the Allotted Trust Lands any such new or increased fees deemed unjustified by the Tribe. Unless so declined by the Tribe, all such new or increased fees shall be applicable to the Allotted Trust Lands and may be imposed and collected by the City.
11. **Exception to Scope of Agency.** This Contract is not intended, and shall not be construed, to operate, limit, or impair the authority of the U.S. Department of the Interior and the Bureau of Indian Affairs to negotiate, execute, approve, or otherwise administer existing and future leases or rights-of-way on Allotted Trust Lands, or to eliminate or substantially impair any existing land use under an approved lease. Since the Tribe cannot substantially interfere with the federal leasing function, it cannot delegate any such authority to the City.
 12. **Immunity.** This Contract is not intended, and shall not be construed, to limit or waive the sovereign or governmental immunity from suit enjoyed by either party.
 13. **Appeals.** Any person aggrieved by a final action of the City in matters within the scope of this agency affecting Allotted Trust Lands may appeal to the Tribal Council for relief, according to the terms of Tribal Ordinance No. 5, "Tribal Land Use Appeal Ordinance," as amended, renumbered, or re-designated from time to time. The Tribal Council, in accordance with the Tribal Land Use Appeal Ordinance, after notice and opportunity for hearing and on the basis of the entire record, may affirm, reverse, or modify any decision of the City on such a matter affecting Allotted Trust Lands as specified in said Tribal Ordinance, and the decision of the Tribal Council shall be final. The Tribal Council shall meet jointly with the City to review an appeal before making a final decision, as specified in the Tribal Land Use Appeal Ordinance, unless the City unilaterally deviates from the joint meeting requirement, thus waiving the City's right to a joint meeting prior to final Tribal decision on the appeal.

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14. **Consultation and Cooperation.** In order to facilitate the regular presentation of the Tribe's views to the City on matters within the scope of this agency and as part of the normal processing of applications and other matters within the scope of this agency, the City will give the Tribe reasonable advance notice (e.g., at the time of distribution of project plans to local utilities for input) of all such matters so that the Indian Planning Commission will be able to evaluate all such matters and present its recommendations to the Tribal Council which, in turn, will present its recommendations to the City in time for such recommendations to be considered by the City staff, City Planning Commission, and City Council.
15. **Best Efforts.** The parties shall exert their best effort to keep this Contract in good standing and to serve as the basis for a mutually beneficial relationship which will encourage and assist the uniform and unified development of all Allotted Trust Lands, and adjacent non-trust lands located within City Limits, in an orderly, expeditious, and professionally sound manner.
16. **Joint Interest Regarding Challenge.**
 - (a) If any third party who is a land use applicant with an application involving any of the subject land use controls specified in Paragraph 5 takes formal court action to challenge any action taken by the City as the Tribe's agent or the Tribe or Tribal Council affirming, reversing, or modifying any decision of the City, as provided herein, whether with or without an appeal having been filed, as provided herein, the City and the Tribe will immediately consult to develop a unified response. The Tribe and the City will coordinate action to address defense against any such challenge, such as providing declarations or copies of documents, assisting legal counsel, preparing and filing an amicus curiae brief, or Tribal intervention as a party in litigation, depending on the nature and scope of this challenge.
 - (b) In any such legal proceedings, the City and the Tribe may each engage and pay for separate or additional legal counsel, at the option of each and, in appropriate cases, may, by separate agreement, agree to engage joint counsel on terms specified in that agreement. It is acknowledged by the Tribe that the City routinely imposes, as a general land use condition of approval, a requirement that the applicant for a land use application indemnify, defend, and hold harmless the City against any legal action brought by third parties challenging the City's approval of the land use application.
17. **Notice of Appeal Rights.** In order to inform developers and others of the availability of appeals of final City actions to the Tribal Council, as provided above, and to make clear the nature of the existence of the agency created by this Contract, the City will provide notice of the availability of the right to appeal any City actions and that such appeal to the Tribal Council must occur prior to filing any legal challenge to any action undertaken by the City. The contents of such notification language will be substantially as agreed upon by Tribal and City representatives.
18. **Termination.** Either party may terminate this Contract, without prejudice to the legal position thereafter asserted, upon thirty (30) days written notice to the other party. In the event of such termination of this Contract, any development project previously granted approval by the City shall continue to be bound by the terms and conditions of such approval.

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SIGNATURES FOLLOW

IN WITNESS WHEREOF, the Parties hereto have executed this Contract by their respective authorized officers.

AGUA CALIENTE BAND OF CAHUILLA INDANS

Jeff L. Grubbe
Chairman, Tribal Council

10/24/18
Date

Larry N. Olinger
Vice Chairman, Tribal Council

10/25/18
Date

Vincent Gonzales III
Secretary-Treasurer, Tribal Council

10/24/18
Date

Reid D. Milanovich
Member, Tribal Council

10/24/18
Date

Anthony W. Purnel
Member, Tribal Council

10/24/18
Date

CITY OF PALM SPRINGS

Robert Moon
Mayor

10/17/18
Date

APPROVED BY CITY COUNCIL

ITEM 5.A. 9/20/18 A1324

Amended & Restated Land Use Contract

APPROVED AS TO FORM

Asst. CITY ATTORNEY

ATTEST:

City Clerk