

REIMBURSEMENT AGREEMENT

Between

CITY OF COACHELLA
a California municipal corporation

and

Paul Pavao, Applicant

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 28TH day of July 2021, by and between the City of Coachella, a California municipal corporation (the "City"), and Paul Pavao (the "Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Indio (proposed for annexation into the City of Coachella), County of Riverside, California. The Property is more particularly described in the legal description attached hereto as Exhibit "A".

B. The Applicant is contemplating the development of the Property as an owner-initiated Annexation of 38.68 acres of vacant land currently in the City of Indio to the City of Coachella, in order to subdivide the land into 25 industrial lots ranging in size from .077 acres to 4.60 acres with all the off-site improvements. The Applicant will pursue applications for various pre-incorporation legislative and discretionary land use approvals for development of the Property including, without limitation, General Plan Amendment (IL/UEC), Pre-Annexation Zone Change (CG-PD/MSIP), Development Agreement, Conditional Use Permits, Tentative Subdivision Maps (Industrial Park Overlay Zone amendment and zoning map amendment for cannabis uses, Hotel, Work Force Development, Substation), Architectural Reviews, and the related Mitigated Negative Declaration with technical documents pursuant to the California Environmental Quality Act ("CEQA") as outlined as part of Pre-Application Review No. 17-06. All of the above shall be referred to collectively as the "Project."

C. To provide the City with the planning, environmental and legal services, and other expertise and information necessary to the City's review process concerning the development of the Property, it is necessary for the City to access the services of planning / environmental peer review consultant Ron Goldman, LAFCO Consultant Kathleen Rollings-McDonald, TKE Engineering traffic consultant, NRO Engineering land surveyor/plan checker, and City Attorney for the Project ("Consultants").

D. As a condition to the City's completion of the review process, the Applicant has agreed to reimburse the City for the Consultants' costs and expenses related to the City's review process in the manner and amounts set forth in this Agreement. The Applicant's reimbursement of City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process the Applicant's Project.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of its fact finding process relating to the review and processing of the Applicant's proposed Project, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The scope of work of each Consultant for the Project is attached hereto as Exhibit "B". The City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate where such amendments are reasonably necessary and related to the City's proper review and consideration of the Applicant's Project.

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law including, without limitation, the California Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants shall be, to the extent permissible by law, privileged and confidential and not subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City intends to retain the following as Consultants pursuant to this Agreement:

- (i) **Planning / Environmental Peer Review Consultant**
- (ii) **LAFCO Consultant – Kathleen Rollings-McDonald**
- (iii) **Traffic Consultant – TKE Engineering**
- (iv) **Land Surveyor/Plan Checker – NRO Engineering**
- (v) **Legal Counsel – Best Best & Krieger LLP**

5. Applicant's Reimbursement of Costs and Expenditures. The Applicant shall reimburse the City for one hundred percent (100%) only of the actual costs and expenditures incurred by the City for identified Consultant costs ("Costs".) The City has preliminarily reviewed the scope of work required and has estimated the Costs to be approximately Twelve Thousand Dollars (\$12,000.00) for planning / environmental consultant work, Three Thousand Five Hundred Dollars (\$3,500) for LAFCO Consultant services, Five Thousand Five Hundred Dollars (\$5,500) for Traffic Consultant services, Three Thousand Five Hundred (\$3,500) for Land Surveyor/Plan Checker services, in addition to legal counsel's fees based on attached scope and hourly fees ("Estimated Costs"). before the City enters into any contractual obligation with or retains the services of any identified consultants, the Applicant shall submit the initial deposit in the amount of Twenty-Two Thousand Two Hundred dollars (\$22,200.00) to cover 50% of the planning/environmental consultant, LAFCO consultant, traffic consultant, land surveyor/plan checker costs, plus \$10,000 as an initial deposit for legal counsel (summary invoices only) costs. The City shall provide copies of monthly invoices prepared by consultants and legal counsel, and the applicant shall make additional deposits when requested by the City with the deposit balance to remain consistent with the initial deposit amount or remaining consultant contract/agreement balances whichever is less to adequately cover the anticipated consultant costs. The City will only enter into contractual obligations under this section once the City of Indio has approved or given a clear indication of approval of the project related annexation. In the event that the services specified in this section are necessary to determine the City of Indio's intent regarding the annexation, the City will consult the applicant before entering into any agreements under this section.

City shall not exceed the Estimated Consultants Costs without Applicant's prior written approval. The City may incur aggregate Costs up to the Estimated Costs, subject to the reasonable approval of the Applicant. The City shall use reasonable good faith efforts to consult with the Applicant prior to amending the scope of services to be provided by the Consultants and incurring Costs that exceed the Estimated Costs ("Excess Costs"). The Applicant's obligation to reimburse the City for Excess Costs which exceed the Estimated Costs shall be contingent upon, the City's providing the Applicant with written notice of the amendment of the scope of work to be performed by Consultants and the estimated Excess Costs prior to the commencement of work. The City shall not incur Excess Costs without the prior written approval of the Applicant.

For purposes of this Section, the City shall be deemed to have consulted with the Applicant when the City has provided written notice to the Applicant that the City reasonably anticipates that it will incur, or has incurred, Excess Costs. If, after consultation, the Applicant disagrees with the City's incurring of Excess Costs, then the Applicant's sole and exclusive remedy will be to terminate this Agreement pursuant to Section 9 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to the Consultants.

6. Evidence of Payment of Consultant Costs Immediately following the City's disbursement of funds to Consultant pursuant to an approved Professional Services Agreement or similar retainer agreement with the Consultant(s), the City shall provide the Applicant with such

reasonable documentation as the Applicant may request to substantiate any demands for payment by Consultant(s).

7. Applicant understands and agrees that City reserves complete discretion and authority regarding the (a) outcome of the Project, (b) contents, scope, analysis and conclusions of the Consultant(s) and Consultant documents, including plans, staff reports, ordinances, resolutions, maps, conditions, mitigation measures, and environmental review documents and findings, (c) and City determinations and decisions on the Project. Nothing in this Agreement shall in any way commit or obligate City to approve any particular development project application or to support the development of the project site or any part of it.

8. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and the City of Indio's approval of the resolution to allow the deannexation of project from the City of Indio and annexation to the City of Coachella fully executed by the parties and shall terminate when all work required has been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement including, without limitation, the obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultant(s) prior to the date of termination. The Applicant's obligation to reimburse the City as provided in this Agreement shall survive the termination of this Agreement pursuant to Section 9.

9. Early Termination. The City may terminate this Agreement prior to the term set forth in Section 8 above, without cost or liability to the City, upon thirty (30) days prior written notice to the Applicant. The Applicant may in its reasonable and sole discretion terminate this Agreement prior to the end of the term set forth in Section 8 above upon thirty (30) days' prior written notice to the City; provided, however, that the Applicant has satisfied all of its obligations under this Agreement to the date of termination regarding reimbursement to the City of both Estimated Costs and Excess Costs and, furthermore, that the Applicant has given City written notice withdrawing its application(s) for the Project.

Within two (2) City working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify the Consultant(s) and instruct them to cease work. Consultant(s) shall be instructed to bill the City for any work completed prior to the date of termination.

10. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld. In determining whether to approve a request by the Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

11. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Coachella.

12. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

13. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed uses of the Property. The Applicant may, however, in its sole and absolute discretion appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever legal fees and costs, in their entirety, including actual attorneys' fees, which may be incurred by the City in defense of such action or proceeding. This City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate and the Applicant shall reimburse the City for any and all attorneys' fees and costs incurred by the City as a result of such third party action or proceeding; provided, however, Applicant may, at any time, notify City in writing of its decision to terminate such reimbursement obligation and, thereafter, in the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorney fees and costs.

14. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by either the City or the Applicant against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

15. Jurisdiction and Venue. This Agreement is executed and is to be performed in the City of Coachella, Riverside County, California, and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Riverside, California. The City and the Applicant each consent to the personal jurisdiction of the court in any such action or proceeding.

16. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

Dated: _____

CITY OF COACHELLA
a California municipal corporation

By: _____
Gabriel Martin, City Manager

ATTEST:

By: _____
Angela M. Zepeda, City Clerk

APPROVED AS TO FORM:

By: _____
Carlos Campos, City Attorney

Dated: _____

APPLICANT

By:

Name: Paul Pavao

Title: Owner

Exhibit "A"

Legal Description of the Property

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$) OF SECTION 30, TOWNSHIP 5 SOUTH, RANGE 8 EAST, IN THE CITY OF INDIO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA .

ASSESSOR PARCEL NUMBER: 603-090-008

Exhibit "B"
Scope of Services

Best Best & Krieger LLP – Legal Counsel

Best Best & Krieger LLP (“BBK”) proposes to provide legal review services to the City of Coachella to assist the City in reviewing and processing the application by Paul Pavao to annex territory into the City of Coachella and procure entitlements and a Development Agreement to develop a 38-acre industrial park on the Property with up to 25 lots and a variety of commercial and industrial buildings, roadways, and related infrastructure. All legal review services shall be billed at BBK’s current standard private client rates, minus ten percent (10%).

The attorneys anticipated to provide legal review services are as follows:

Amanda Daams	\$365/hour less 10 percent (10%)
Carlos Campos	\$465/hour less 10 percent (10%)
Charity Schiller	\$530/hour less 10 percent (10%)

Other attorneys may also be used, provided their billing rates are less than those identified above.

Exhibit "B-1"
Scope of Services

Contract Planner Services (Hourly Rate - \$150/hr)

The Services to be provided include the following:

1. Assist City of Coachella staff in a lead project management capacity with review, processing, and formulation of recommendations for applications for Pre-Annexation Zoning, General Plan Amendment, subdivision maps, and other related land use entitlements for the "Emerald Park" commercial/industrial project, located at the northwest corner of Avenue 48 and Harrison Street in the City of Coachella, California.
2. Attendance at project meetings with the project proponents and City staff as needed. Attendance at Planning Commission and City Council public hearings, and other meetings as directed by the City Manager or designee.
3. Completion of written reports and inter-departmental communications, as needed, to carry out the tasks of "project manager" for the Project. This includes but is not limited to, preparation of written memorandums, staff reports, public notices, notice of city actions, City Council resolutions and ordinances, for completion by City staff.
4. Assist city staff with proof-reading and editing of draft documents including the Emerald Park Design Guidelines and Draft CEQA documents.

Exhibit "B-2"
Scope of Services

TKE Engineering – Traffic Consultant

The Services to be provided include the following:

- 1) Scoping review of traffic impact analysis to be procured by the City's CEQA consultant on the project.
- 2) Peer review of the traffic impact analysis in the draft CEQA documents and preparation of written recommendations to the City of Coachella.

Exhibit "B-3"
Scope of Services

Kathleen Rollings-McDonald – LAFCO Consultant (Hourly Rate \$125)

The Services to be provided include the following:

- 1) Assist with the City of Indio De-Annexation, concurrent Amendment to City of Indio / City of Coachella Sphere of Influence plans, and review of LAFCO Annexation documents and related resolutions and staff reports.