

Project: Airport Boulevard Bridge Replacement Project (Orange Street to Desert Cactus Drive)

**AGENCY REIMBURSEMENT AGREEMENT
BY AND BETWEEN CVAG AND THE COUNTY OF RIVERSIDE**

**DESIGN AND CONSTRUCTION COSTS FOR
AIRPORT BOULEVARD BRIDGE REPLACEMENT PROJECT (ORANGE STREET
TO DESERT CACTUS DRIVE)**

THIS AGREEMENT is made and entered into this **26th day of June 2023**, by and between the **County of Riverside ("Agency")**, and the **Coachella Valley Association of Governments**, a California joint powers agency, ("**CVAG**"), and is made with reference to the following background facts and circumstances:

RECITALS

The "Coachella Valley Area Transportation Study", a valley-wide study prepared under the auspices of CVAG, has identified various transportation and highway projects and corridors throughout the Coachella Valley to be of regional importance. This project is included in the 2016 Transportation Project Prioritization Study (TPPS) document; and,

Approval of a highway financing measure by the voters of Riverside County in November of 1988, as well as the approval of an extension of Measure A by the voters in November of 2002, has created a source of funds with which to construct such projects; and,

CVAG by agreement with its member agencies and with the Riverside County Transportation Commission ("RCTC"), has been designated as the agency through which such funds are to be conveyed and disbursed for the purpose of completing said regional transportation projects; and,

CVAG Executive Committee, on July 31, 2006, approved the implementation of the amended Transportation Uniform Mitigation Fee "TUMF" Fee Ordinance to increase the collected TUMF Fee, effective January 1, 2007; and,

Under CVAG's policy of funding eligible projects with member jurisdictions, effective January 1, 2007, the responsible jurisdiction(s) will be responsible for paying Twenty-five Percent (25%) of the Project costs (the Local Share), as well as any ineligible project costs, and CVAG will be responsible for Seventy-five Percent (75%) of eligible Project costs (the Regional Share). Historically, the CVAG Regional Share has been paid as a reimbursement to the Jurisdiction, as invoices are submitted and approved.

Agency desires to proceed with the design and construction phases for the **Airport Boulevard Bridge Replacement Project (Orange Street to Desert Cactus Drive)**, providing a not-to-exceed amount of **\$4,950,000** in regional funding for eligible design and construction costs.

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CVAG's share of the Project cost is not-to-exceed \$4,950,000, being the maximum approved Regional Share of the Project costs.

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

1. The program embodied in this agreement for the reimbursement of funds by CVAG shall apply only to those regional arterial projects that have heretofore been identified in CVAG's Transportation Project Prioritization Study or specifically authorized by CVAG's Executive Committee. The Project was specifically approved by CVAG's Executive Committee as consistent with the TPPS on June 26, 2023, and is therefore eligible.
2. The Project is generally described as and consists of the following: **design and construction costs for Airport Boulevard bridge replacement project (Orange Street to Desert Cactus Drive)**. These services will hereinafter be referred to as the "Project".
3. This project will intersect the Coachella Valley-wide project known as the CV Link. As such, Agency shall obtain a cost-proposal for the design and construction of the required CV link under-crossing. If CVAG is agreeable to the cost proposal, a written amendment to the Agreement shall be executed by the parties to include the design and construction of the required CV Link under-crossing in the scope of work for this project. CVAG shall be responsible to contribute additional regional funding to cover one hundred percent (100%) of the cost for this added scope of work. For the avoidance of doubt, the parties agree no Local Share will be required for this added scope of work.
4. The scope of work of the Project is more particularly described in **Exhibit "A"**, entitled "Scope of Services " attached hereto and made a part hereof. The cost estimate for the Project is more particularly described in **Exhibit "B"** - "Estimate of Cost", attached hereto and made a part hereof. The cost estimates include a calculation intended to allow Agency to recover an amount representing the time of its employed staff in working on the Project as well as amount Agency shall pay to outside contractors in connection with the Project. CVAG's cost share for the project will be as shown on Exhibit "B" unless amended pursuant to the provisions of Paragraph 6.

This Agreement shall establish a Time Trigger, which will require that the start of the *Construction Phase* of the Project must begin by June 26, 2025.

5. It is the agreement between CVAG and Agency that of the total estimated cost of the project after accounting for federal highway bridge program funds will be

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approximately \$6,600,000, CVAG' Regional Share will equal \$4,950,000, and the Local share shall be \$1,650,000, as well as equal one hundred percent (100%) of all costs not eligible for reimbursement by CVAG. This Agreement shall establish that CVAG may decline or delay regional funds should it be determined that such action is necessary to maintain a minimum balance of regional funds.

6. Agency agrees to seek reimbursement of only those costs which are eligible for reimbursement by CVAG, as outlined in the CVAG Policies and Procedures Manual for the Regional Arterial Program, as most recently amended.
7. Agency shall be responsible for initial payment of all covered costs as they are incurred. Following payment of such costs, Agency shall submit invoices to CVAG requesting reimbursement of seventy-five percent of those eligible costs associated with the Project. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to Agency, and documents evidencing Agency's payment of the invoices or demands for payment. Agency shall also submit a Project Completion Report, in a form acceptable to CVAG, with each statement. Agency shall submit invoices not more often than monthly and not less often than quarterly.
 - 6.1 Upon receipt of an invoice from Agency, CVAG may request additional documentation or explanation of the Project costs. Undisputed reimbursement amounts shall be paid by CVAG to Agency within thirty (30) days.
 - 6.2 If a post-payment audit or review indicates that CVAG has provided reimbursement to Agency in an amount in excess of One-Hundred Percent of eligible costs, or has provided reimbursement of ineligible Project costs, Agency shall reimburse CVAG for the excess or ineligible payments within thirty (30) days of notification by CVAG.
8. Prior to any final payment to Agency by CVAG, a final report shall be submitted to CVAG by Agency containing a record of all payments made for said Project and the source of funds of all such payments, together with a record of all change orders, cost over-runs, and other expenses incurred. Final payment will thereafter be paid by CVAG in accordance with its rules, regulations and policies concerning project cost determination and expense eligibility.
9. The format used for all bids solicited by Agency for the Project shall require itemization sufficient to allow quantities of each bid item to be easily discernible.
10. The parties agree that should unforeseen circumstances arise which result in new work not covered in Exhibit "A," an increase of any costs over those shown in Exhibit "B," or other changes in the Scope of Work are proposed, CVAG will in

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good faith consider an amendment to this Agreement to provide for further appropriate reimbursement if the proposed amendment is in accordance with the policies, procedures, and cost determination/expense eligibility criteria adopted by CVAG. Non-substantive changes may be made to this agreement subject to CVAG's General Counsel's approval.

11. Agency shall maintain an accounting of all funds received from CVAG pursuant to this Agreement in accordance with generally accepted accounting principles. Agency agrees to keep all Project contracts and records for a period of not less than three years from the date a notice of completion is filed by the Agency on such Project; or, if the Project is not one as to which a notice of completion would normally be recorded, for three years from the date of completion. Agency shall permit CVAG, at any reasonable time, upon reasonable notice, to inspect any records maintained in connection with the Project. CVAG shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection.

12. The occurrence of any one or more of the following events shall, at CVAG's option, constitute an event of default and Agency shall provide CVAG with immediate notice thereof.

11.1 Any warranty, representation, statement, report or certificate made or delivered to CVAG by Agency or any of Agency's officers, employees or agents now or hereafter which is incorrect, false, untrue or misleading in any material respect;

11.2 Agency shall fail to pay, perform or comply with, or otherwise shall breach, any obligation, warranty, term or condition in this Agreement or any amendment to this Agreement, or any agreement delivered in connection with the Project; or,

11.3 There shall occur any of the following: dissolution, termination of existence or insolvency of Agency; the commencement of any proceeding under any bankruptcy or insolvency law by or against Agency; entry of a court order which enjoins, restrains or in any way prevents Agency from paying sums owed to creditors.

13. No waiver of any Event of Default or breach by one party hereunder shall be implied from any omission by the other party to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver and the waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by one party to or of any act

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by the other party shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act.

14. This Agreement is made and entered into for the sole protection and benefit of CVAG and Agency and no third person shall have any right of action under this Agreement.
15. It is the intent of the Agency and CVAG that the Project be represented as being funded by Measure "A"/TUMF funds. All public notices, news releases, and documents shall indicate that the Project is being cooperatively developed by the Agency, RCTC, and CVAG using Measure "A"/TUMF funds. Prior to initiation of on-site construction, Agency agrees to provide at least one "Project Sign" to be placed in a safe and visible location near the site of construction so that all travelers passing the location have the opportunity to observe who the agencies are that are providing funds for the construction of the Project.
16. This Agreement is for funding purposes only and nothing herein shall be construed so as to constitute CVAG as a party to the construction or in ownership or a partner or joint venture with Agency as to the Project. The Agency shall assume the defense of, indemnify and hold harmless CVAG, its member agencies, and their respective officers, directors, agents, employees, servants, attorneys, and volunteers, and each and every one of them, from and against all actions, damages, claims, losses and expenses of every type and description to which they may be subjected or put by reason of or resulting from the actions or inactions of the Agency related to the Project or taken in the performance of this Agreement or any agreement entered into by Agency with reference to the Project. CVAG shall assume the defense of, indemnify and hold harmless the Agency, its officers, directors, agents, employees, servants, attorneys, and volunteers, and each of them, from and against all actions, damages, claims, losses, and expenses of every type and description to which they may be subjected or put by reason of or resulting from the actions of CVAG taken in the performance of this Agreement.
17. Agency agrees to include in its contract specifications and bid documents a requirement that all prime contractors shall name CVAG and its member agencies as "also insured" on all liability insurance coverage required by Agency on each contract. Agency will provide a copy of the Insurance Certificate to CVAG, depicting CVAG and its member agencies as "also insureds," within 30 days of signing a contract with the prime contractor.
18. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by voluntary negotiations between the parties shall first be decided by the CVAG Executive Director or designee, who may consider any written or verbal evidence submitted by Agency. This decision shall be issued in writing. However, no action in accordance with this Section shall in any way limit either party's rights

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and remedies through actions in a court of law with appropriate jurisdiction. Neither the pendency of dispute nor its consideration by CVAG will excuse Agency from full and timely performance in accordance with the terms of this Agreement.

19. Any agency receiving federal funds must have an approved Disadvantaged Business Enterprise program. All recipients of Federal Highway Administration (FHWA) funds must carry out the provisions of Part 26, Title 49 of the Code of Federal Regulations (CFR) which established the Federal Department of Transportation's policy supporting the fullest possible participation of firms owned and controlled by minorities and women in the Department of Transportation programs. Except to the extent that such or other contrary federal regulations may apply, Agency covenants that, by and for itself and all persons claiming under or through it, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the performance of this Agreement.
20. Agency warrants that all aspects of the Project shall be undertaken in compliance with all applicable local, state and federal rules, regulations and laws. Agency will execute and deliver to CVAG such further documents and do other acts and things as CVAG may reasonably request in order to comply fully with all applicable requirements and to effect fully the purposes of this Agreement.
21. This Agreement may not be assigned without the express written consent of CVAG first being obtained.
22. Agency, its successors in interest and assigns shall be bound by all the provisions contained in this Agreement.
23. No officer or employee of CVAG shall be personally liable to Agency, or any successor in interest, in the event of any default or breach by CVAG or for any amount which may become due to Agency or to its successor, or for breach of any obligation of the terms of this Agreement.
24. Notwithstanding any other provision herein, CVAG shall not be liable for payment or reimbursement of any sums for which CVAG has not first obtained the necessary and appropriate funding from TUMF and/or Measure "A" monies.
25. No officer or employee of CVAG shall have any personal 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 or her personal interest or the interest of any corporation, partnership or association in which she or he is, directly or indirectly, interested, in violation of any state, federal or local law.
26. Agency warrants that the funds received by CVAG pursuant to this Agreement

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shall only be used in a manner consistent with CVAG's reimbursement policy and all applicable regulations and laws. Any provision required to be included in this type of agreement by federal or state law shall be deemed to be incorporated into this Agreement.

27. All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing, such as Federal Express or UPS); sent by telecopier or facsimile machine capable of confirming transmission and receipt; or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

If to **County of Riverside:** Mark Lancaster
Director of Transportation
County of Riverside
3525 14th Street
Riverside, CA 92501
Telephone: (951) 955-6800

If to **CVAG:** CVAG
74-199 El Paseo Suite 100,
Palm Desert, CA 92260
Telephone: (760) 346-1127

Notices sent in accordance with this paragraph shall be deemed delivered upon the next business day following the: (i) date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); (ii) the date of actual receipt (if personally delivered by other means); (iii) date of transmission (if sent by telecopier or facsimile machine); or (iv) the date of delivery as indicated on the return receipt if sent by certified or registered mail, return receipt requested. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

28. This Agreement and the exhibits herein contain the entire agreement between the parties, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matter dealt with herein or the duties of any party in relation thereto, not expressly set forth in this Agreement, is null and void.
29. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as

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to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 30. In the event either party hereto brings an action or proceeding for a declaration of the rights of the parties, for injunctive relief, for an alleged breach or default, or any other action arising out of this Agreement, or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.
- 31. Time is of the essence in this Agreement, and each and every provision hereof in which time is an element.
- 32. This Agreement and all documents provided for herein shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising from this Agreement shall be adjudicated in the courts of Riverside County, Desert Judicial District, State of California.
- 33. Agency warrants that the execution, delivery and performance of this Agreement and any and all related documents are duly authorized and do not require the further consent or approval of any body, board or commission or other authority.
- 34. This Agreement may be executed in one or more counterparts and when a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives on this date:

ATTEST:

COUNTY OF RIVERSIDE

By: _____
Clerk of the Board of Supervisors

By: _____
Chair of the Board of Supervisors

ATTEST:

CVAG

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By: _____
Tom Kirk, Executive Director

By: _____
Scott Matas, Chair

ATTEST:

City of Coachella

By: _____
Delia Granados, City Clerk

By: _____
Steven Hernandez, Mayor

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EXHIBIT "A"

SCOPE OF SERVICES

**AGENCY REIMBURSEMENT AGREEMENT
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**DESIGN AND CONSTRUCTION COSTS FOR
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TO DESERT CACTUS DRIVE)**

The Scope of Services for this Project includes design and construction costs for Airport Boulevard bridge replacement project (Orange Street to Desert Cactus Drive).

The proposed scope of work for this Project includes the replacement of the existing functionally obsolete and seismically vulnerable Airport Boulevard bridge, over the Whitewater River, with a wider two-lane bridge. The project will reconstruct the connecting approach roadways to meet Caltrans highway standards and seismic design codes. The new bridge will be widened to 71 feet, that includes 6-foot-wide sidewalks on both sides, 8-foot-wide shoulders, 14-foot-wide eastbound and westbound lanes, and a 12-foot-wide striped median/turn lane. The project will also raise the bridge profile by approximately 2-3 feet to maintain a minimum freeboard from the flood water in the river.

The project shall include additional design and construction for the required CV Link undercrossing, which will be accounted for separately from the primary bridge design and replacement project. The intersection traffic signals will be constructed to be consistent with the Regional Traffic Signal Synchronization Master Plan and incorporate best practices consistent with the Regional ATP Design Guidelines.

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EXHIBIT "B"

**AGENCY REIMBURSEMENT AGREEMENT
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The total estimated cost of the project after accounting for federal highway bridge program funds will be approximately \$6,600,000. CVAG will fully fund 100% of the design and construction improvements related to CV Link, which will be accounted for separately from the primary bridge design and replacement project.

In accordance with CVAG policy, CVAG agrees to pay 75% of the qualified costs, in this case the estimated as not-to-exceed \$4,950,000, as well as 100% of the CV Link costs to be determined. The County of Riverside as Lead Agency agrees to invoice CVAG for 75% of the eligible bridge project cost and 100% of the design and construction costs associated with CV Link. The Local Share shall be \$1,650,000 as 25% of the project cost, as well as equal one hundred percent (100%) of all costs not eligible for reimbursement by CVAG. The County of Riverside as the Lead Agency agrees to invoice the City of Coachella for any cost participation in the amount of 12.5% of the proportionate local share up to a maximum, not to exceed, amount of \$825,000.

Regional Share 75%	Local Share 25%	
CVAG	County of Riverside (12.5%)	City of Coachella (12.5%)
\$4,950,000.00	\$825,000.00	\$825,000.00