

**AGENCY REIMBURSEMENT AGREEMENT
BY AND BETWEEN CVAG AND THE CITY OF COACHELLA**

ATP – ARTS & MUSIC LINE

THIS AGREEMENT is made and entered into this ____ day of _____ 2020, by and between the **City of Coachella ("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 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).

CVAG and the Agency desire to proceed with the **ATP – ARTS & MUSIC LINE Project**. **The estimated engineering cost of the Project is \$2,731,897. CVAG's share of the Project cost is not-to-exceed \$2,048,923**, being 75% of the anticipated 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 30 September 2019 and is therefore eligible.

2. The Project is generally described as and consists of the following: **ATP – ARTS & MUSIC LINE Project**. These services will hereinafter be referred to as the "Project".

3. 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 amount CVAG shall pay to outside contractors in connection with the Project. The amount of the Jurisdiction One-Quarter and the CVAG Three-Quarters shall be calculated by reference to the cost estimates as shown on Exhibit "B" unless amended pursuant to the provisions of Paragraph 6.

4. It is the agreement between CVAG and Agency that of the total estimated cost of the project will be approximately \$2,731,897, CVAG' Regional Share will equal \$2,048,923, and the Local share shall be \$682,974. **The 25% local share shall be split between The City of La Quinta, the City of Indio and the City of Coachella.** The proportional share owed by each jurisdiction shall be determined by linear mile of the Arts & Music Line located within that Jurisdiction and is included in Exhibit "B". 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.

5. Agency agrees to Pay reimbursement for its proportional share of only those costs which are eligible for reimbursement to CVAG, as outlined in the CVAG Policies and Procedures Manual for the Regional Arterial Program, as most recently amended.

6. CVAG shall be responsible for initial payment of all covered costs as they are incurred. Following payment of such costs, CVAG shall submit invoices to Agency requesting reimbursement of the proportionate share of those eligible costs associated with the Project. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to CVAG, and documents evidencing CVAG's payment of the invoices or demands for payment. CVAG shall also submit a Project Completion Report, in a form acceptable to Agency.

6.1 Upon receipt of an invoice from CVAG, Agency may request additional documentation or explanation of the Project costs. Undisputed reimbursement amounts shall be paid by Agency to CVAG within thirty (30) days.

6.2 If a post-payment audit or review indicates that Agency has Provided reimbursement to CVAG in an amount in excess of its proportionate share of eligible costs, or has provided reimbursement of ineligible Project costs, CVAG shall

reimburse Agency for the excess or ineligible payments within thirty (30) days of notification by Agency.

7. Prior to any final payment to CVAG by Agency, a final report shall be submitted to Agency by CVAG 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 Agency in accordance with its rules, regulations and policies concerning project cost determination and expense eligibility.

8. The format used for all bids solicited by CVAG for the Project shall require itemization sufficient to allow quantities of each bid item to be easily discernible.

9. 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 and Agency will in 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 and Agency's General Counsel's approval.

10. CVAG shall maintain an accounting of all funds received from Agency pursuant to this Agreement in accordance with generally accepted accounting principles. CVAG 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 CVAG 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. CVAG shall permit Agency, at any reasonable time, upon reasonable notice, to inspect any records maintained in connection with the Project. Agency 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.

11. The occurrence of any one or more of the following events shall constitute an event of default and CVAG shall provide Agency with immediate notice thereof.

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

11.2 CVAG 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.

12. 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 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.

13. 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.

14. 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, CVAG 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. **The project funding sign for this Project shall be modified to conform to the Bicycle and Pedestrian Safety Program with the design to be approved by CVAG.**

15. This Agreement is for funding purposes only and nothing herein shall be construed so as to constitute Agency as a party to the construction or in ownership or a partner or joint venturer with CVAG 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.

16. CVAG agrees to include in its contract specifications and bid documents a requirement that all prime contractors shall name Agency and its member agencies as "also insured" on all liability insurance coverage required by CVAG on each contract. CVAG will provide a copy of the Insurance Certificate to Agency, depicting Agency as "also insureds," within 30 days of signing a contract with the prime contractor.

17. 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 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.

18. 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.

19. CVAG warrants that all aspects of the Project shall be undertaken in compliance with all applicable local, state and federal rules, regulations and laws.

20. This Agreement may not be assigned without the express written consent of Agency first being obtained.

21. Agency, its successors in interest and assigns shall be bound by all the provisions contained in this Agreement.

22. 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.

23. 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.

24. No officer or employee of Agency 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.

25. CVAG warrants that the funds received by Agency pursuant to this Agreement 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.

26. 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 **City of Coachella:**

Gabor Pakozdi
City Engineer
City of Coachella
Coachella Civic Center
53-990 Enterprise Way
Coachella, CA 92236
Telephone: (760) 398-3502

If to **CVAG:**

CVAG
Eric V. Cowle
73-710 Fred Waring Drive
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.

27. 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.

28. 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 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.

29. 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.

30. Time is of the essence in this Agreement, and each and every provision hereof in which time is an element.

31. 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.

32. CVAG 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.

33. 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:

CVAG

By: _____
Tom Kirk, Executive Director

By: _____
Jeff Grubbe, Chairman

ATTEST:

By: _____

CITY OF COACHELLA

By: _____
William Pattison, City Manager

Approved as to form:

By: _____
Carlos Campos, City Attorney

ATTEST:

By: _____
Angela Zepeda, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

**AGENCY REIMBURSEMENT AGREEMENT
BY AND BETWEEN CVAG AND CITY OF COACHELLA**

2019 ATP Safety Projects

The Scope of Services for this Project includes:

The preparation of Plans, Specifications, and Cost Estimates for the Arts and Music Line, a bike boulevard along Avenue 48 approximately from Spotlight 29 northeast of the City of Coachella to the Bear Creek Bike Path in the City of La Quinta.

See attached scope documents from Albert A. Webb Associates.

EXHIBIT "B"

**AGENCY REIMBURSEMENT AGREEMENT
BY AND BETWEEN CVAG AND CITY OF COACHELLA
COST ESTIMATES**

2019 ATP Safety Projects

The total estimated engineering cost of the Project is \$2,731,897.

CVAG agrees to pay 75% of the qualified project costs estimated as not-to-exceed \$2,048,923.

The City of Coachella Agrees to pay no more than \$31,819.28, which represents a proportionate share (calculated by linear mileage) of the remaining 25% of the qualified project costs.

The anticipated cost share breakdown for the Local 25% Share \$682,974.25 is:

La Quinta	Indio	Coachella
\$324,061	\$327,094	\$31,819.28

See attached Cost document from Albert A. Webb Associates.