

**REIMBURSEMENT AGREEMENT
BY AND BETWEEN CVAG AND THE CITY OF CATHEDRAL CITY
FOR THE
CVAG VARNER ROAD I-10 BYPASS FEASIBILITY STUDY**

THIS AGREEMENT is made and entered into this **17th day of May 2024**, by and between **Cathedral City**, a municipal corporation, ("**City**") and the **Coachella Valley Association of Governments**, a California joint powers authority, ("**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,

CVAG has planned for the regional synchronization of traffic signals, the modernization and standardization of hardware and software, and preparation for future intelligent transportation system infrastructure (ITS) in the Coachella Valley; and,

In February 2018, the Executive Committee approved the Master Plan for CV Sync; and,

In February 2021, the Executive Committee awarded the construction of Phase I of the CV Sync project; and,

In December 2022, the Executive Committee awarded the construction of Phase II of the CV Sync project; and,

In December 2023, CVAG's Executive Committee authorized the Executive Director to execute an engineering services contract with Dokken Engineering for a total not-to-exceed amount of \$5,148,209, including contingency, for work along Varner Road to include CV Sync Phase III design and engineering and a feasibility study of an Interstate 10 bypass; and to negotiate and execute reimbursement agreements with the local jurisdictions for costs related to the I-10 bypass (study).

Whereas, CVAG will expend Measure A or TUMF funds to front the cost of the Varner Road I-10 Bypass Feasibility Study project with said expended funds to be reimbursed in part to CVAG by Cathedral City.

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

1. The Project is generally described as and consists of the following: **Varner Road I-10 Bypass Feasibility Study**. These services will hereinafter be referred to as the "Project".
2. 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.
3. The total estimated cost of the Project shall not exceed \$5,148,209.00. CVAG shall coordinate the environmental studies, civil engineering and bypass analysis of the Project. CVAG shall be responsible to pay CVAG's Consultant for the Project. City shall reimburse CVAG its proportional share, 15.4% of a portion of the Local Share of the Project equal to \$86,463.47, as detailed in **Exhibit "B"**.
4. CVAG may decline or delay regional funds to the Project should CVAG determine that such action is necessary to maintain a minimum balance of TUMF or Measure A funds.
5. CVAG shall be responsible for initial payment of all covered Project costs as they are incurred. Following payment of such costs, CVAG shall submit invoices to City requesting reimbursement of the City's Local Share of 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 City, with each statement. CVAG shall submit invoices not more often than monthly and not less often than quarterly.

6.1 Upon receipt of an invoice from CVAG, City may request additional

documentation or explanation of the Project costs. Undisputed reimbursement amounts shall be paid by City to CVAG within thirty (30) days.

6.2 If a post-payment audit or review indicates that City has provided reimbursement to CVAG in an amount in excess of the City's Local Share of eligible costs, CVAG shall reimburse City for the excess payments within thirty (30) days of notification by CVAG.

6. Prior to any final payment to CVAG by City, a final report shall be submitted to City 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 City in accordance with CVAG rules, regulations and policies concerning project cost determination and expense eligibility.
7. 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 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.
8. CVAG shall maintain an accounting of all funds received from City 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 City, at any reasonable time, upon reasonable notice, to inspect any records maintained in connection with the Project. City 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.
9. The occurrence of any one or more of the following events shall, at CVAG's option, constitute an event of default and City shall provide CVAG with immediate notice thereof.

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

11.2 City 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 City; the commencement of any proceeding under any bankruptcy or insolvency law by or against City; entry of a court order which enjoins, restrains or in any way prevents City from paying sums owed to creditors.

10. 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.
11. This Agreement is made and entered into for the sole protection and benefit of CVAG and City and no third person shall have any right of action under this Agreement.
12. This Agreement is for funding purposes only and nothing herein shall be construed so as to constitute CVAG as an owner or a partner or joint venture with City as to the Project. CVAG shall assume the defense of, indemnify and hold harmless the City 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 CVAG related to the Project or taken in the performance of this Agreement or any agreement entered into by City with reference to the Project.
13. 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 City. This decision shall be issued in writing. However, no action in accordance with this Section shall in any way limit any 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 City from full and timely performance in accordance with the terms of this Agreement.

14. 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, City 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.
15. City and CVAG warrant that all aspects of the Project undertaken by them shall be undertaken in compliance with all applicable local, state and federal rules, regulations and laws. City 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.
16. This Agreement may not be assigned without the express written consent of CVAG first being obtained.
17. City and their successors in interest and assigns shall be bound by all the provisions contained in this Agreement.
18. No officer or employee of CVAG shall be personally liable to City or any successor in interest, in the event of any default or breach by CVAG or for any amount with may become due to City or to its successor, or for breach of any obligation of the terms of this Agreement.
19. 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.
20. CVAG warrants that the funds received by City 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.
21. 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 **Cathedral City**:

John A. Corella
Director of Public Works
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Telephone: (760) 770-0340

If to **CVAG**:

Tom Kirk
Executive Director
Coachella Valley Association of Governments
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.

22. 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.
23. 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.
24. 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.

25. Time is of the essence in this Agreement, and each and every provision hereof in which time is an element.
26. 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.
27. City and CVAG warrant 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.
28. 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 the above referenced date:

ATTEST:

CITY OF CATHEDRAL CITY

By: _____
Tracy R. Hermosillo, City Clerk

By: _____
Charles P. McClendon, City Manager

ATTEST:

**COACHELLA VALLEY ASSOCIATION
OF GOVERNMENTS**

By: _____
Allen McMillen, Contracts Analyst II

By: _____
Tom Kirk, Executive Director

EXHIBIT "A"

SCOPE OF SERVICES

**REIMBURSEMENT AGREEMENT
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Varner Road is a de-facto bypass for Interstate 10 through much of the Coachella Valley. The Bypass Feasibility Study will evaluate improvements that could enhance the effectiveness of Varner Road's use in this capacity, including consideration of alternative strategies, and CV Sync.

Intelligent Transportation System elements will be added to the Varner Road corridor, including Avenue 42. These improvements will allow Varner Road to be incorporated into CV Sync as "Phase III". Consistent with CV Sync phases I and II, CVAG will provide 100% of the costs associated with the CV Sync elements of this project.

EXHIBIT "B"

REIMBURSEMENT AGREEMENT BY AND BETWEEN CVAG AND THE CITY OF CATHEDRAL CITY FOR THE CVAG VARNER ROAD I-10 BYPASS FEASIBILITY STUDY

Dokken Engineering Total Contract \$5,148,209.00

		<u>CVAG Share</u>	<u>Local Share</u>
CV Sync Phase III	\$2,902,404.50	\$2,902,404.50 (100%)	\$0
Varner I-10 Bypass	\$2,245,804.50	<u>\$1,684,353.38</u> (75%)	\$561,451.13 (25%)
		\$5,148,209.00	

Dokken Engineering Varner I-10 Bypass \$2,245,804.50
CVAG \$1,684,353.38 (75%)
Local Share \$ 561,451.13 (25%)

Local Shares calculated by Varner Road overall miles, overall signals, overall drainage issue miles within study area.

	<u>Miles</u>	<u>%</u>	<u>Signals</u>	<u>%</u>	<u>Drainage Issue Miles</u>	<u>%</u>	<u>Avg Overall %</u>
Riverside County	11.0	67.7	14	87.5	8.5	73.1	76.1
Cathedral City	3.1	19.3	0	0	3.1	26.9	15.4
City of Indio	<u>2.1</u>	<u>13.0</u>	<u>2</u>	<u>12.5</u>	<u>0</u>	<u>0</u>	<u>8.5</u>
	16.2	100	16	100	11.6	100	100

Local Share: \$561,451.13

Riverside County 76.1% = \$427,264.31

Cathedral City 15.4% = \$86,463.47

City of Indio 8.5% = \$47,723.35

The project was kicked-off with the Consultant on February 13, 2024. Project costs will be retroactive to that date,