

E. Approval of License Agreement with the Coachella Valley Association of Governments (CVAG) for the construction, maintenance and operation of portions of the CV Link facility on City-owned properties.

Recommendation: To approve a license agreement between the City and the Coachella Valley Association of Governments (CVAG) for the construction, maintenance and operation of portions of the CV Link project on City-owned properties, identified as Assessor Parcels Nos 687-480-007, 008, 018, and 674-020-051, 053; and authorize the City Manager and City Clerk to execute the license agreement on behalf of the City.

**LICENSE AGREEMENT BY AND BETWEEN
COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS
AND
THE CITY OF CATHEDRAL CITY
FOR CV LINK ON CITY OWNED PROPERTY**

1. PARTIES AND DATE.

This License Agreement is made and entered into this ____ day of _____, 2024 by and between the CITY OF CATHEDRAL CITY, a municipal corporation organized under the laws of the State of California ("City") and COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS, a joint powers authority created under the laws of the State of California ("Licensee" or "CVAG"). City and Licensee are sometimes individually referred to as "Party" and collectively as "Parties" in this License Agreement.

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to own and operate public property of various kinds and authorize the use of such property by other public entities and parties. Such public property in this License Agreement is on the Coachella Valley Stormwater Channel Levee between Cathedral Canyon Drive and Date Palm Drive; and, east of Date palm Drive, south of the Cathedral Canyon West Channel, referred to as "Property" or "Properties" in this License Agreement, and more specifically described as, Assessor Parcel Numbers 687-480-007, 008, 018, 674-020-051 and 674-020-053 and depicted in Exhibit A.

2.2 Licensee. CVAG is advancing a project known as "CV Link", a multi-modal transportation facility that will connect the communities of the Coachella Valley by providing a means to travel by foot, bicycle or low-speed electric vehicle rather than by automobile. CV Link will extend over the Properties for which City has ownership interest. The rights and obligations arising from this License Agreement shall only apply to the Properties. The transportation facility, including all permanent improvements, to be built on the Properties will herein be referred to as "CV Link" or the "Project," interchangeably.

2.3 Purpose. City desires to allow CVAG to improve the Properties with a pathway and access point for CV Link and provide the City with enhanced bicycle, pedestrian and low speed electric vehicle facilities for use by the general public. Said improvements for the benefit of the general public shall include, but not be limited to, shade structures, benches, trash cans, kiosks, bike racks, wayfinding signage, solar lights, concrete, sparkle grain concrete, seeded glass lithocrete, decomposed granite and landscaping as depicted in Exhibit B, attached to this License Agreement.

2.5 Consideration. This License Agreement is made in consideration of the terms, conditions and mutual covenants contained herein, the sufficiency of which are hereby acknowledged.

3. LICENSE.

3.1 Terms of License Agreement. City hereby grants to Licensee, including Licensee's agents, employees, contractors, and consultants, a nonexclusive license to enter the Property for the purpose of construction of CV Link. Licensee acknowledges and agrees that this License Agreement does not extend to any area outside of the Properties. Any License or permission granted hereunder is subject to the discretion and approval of the City throughout the term of the License Agreement and the City retains authority to terminate any activities conducted pursuant to this License Agreement.

3.2 Restrictions on License Agreement. Licensee shall not use, and Licensee shall prohibit any of its Agents (defined as follows) or Invitees (defined as follows) from using the Properties other than for the intended purposes described herein. The term "Agents" shall mean Licensee's officers, directors, members, agents, employees, invitees, contractors, subcontractors, and any employees of such parties. The term "Invitees" shall mean Licensee's invitees, guests or business visitors. By way of example only and without limitation, the following uses of the Properties by Licensee, or any of its Agents or Invitees, are as follows:

(a) Licensee shall use the Properties to construct a pathway and access point for CV Link for the benefit of public use and have amenities including, but not limited to, shade structures, benches, trash cans, kiosks, bike racks, wayfinding signage, solar lights, concrete, sparkle grain concrete, seeded glass lithocrete, decomposed granite and landscaping.

(b) Licensee may utilize the Properties for potential future public and special events; CV Link marketing opportunities; and any other similar uses that may be a benefit to the general public. Under these circumstances, Licensee will provide proper event notification (i.e., flyer, media advertisement, etc.) prior to the event and obtain written permission from the City. Said permission shall be granted by the City Manager.

4. TERMS.

4.1 Term and Termination of License Agreement. The term of this License Agreement shall be perpetual and shall remain in force so long as the City remains in effect. This License Agreement shall not be effective, enforceable, or binding until the License Agreement is approved in writing by the City.

4.2 Non-Assignment of License Agreement. The permission, rights and privileges granted hereunder are non-exclusive and non-transferable. Licensee shall not, either voluntarily or by action of law, assign or transfer this License Agreement or any obligation, right, title or interest assumed by Licensee herein without the prior written consent from the City. If Licensee attempts an assignment or transfer of this License Agreement or any obligation, right, title or interest herein, City may at its option, terminate the License Agreement and shall thereupon be relieved from any and all obligations to Licensee or its assignee or transferee.

4.3 Compliance with Laws; Regulatory Approvals. Licensee shall, at its sole expense, conduct and cause to be conducted all undertakings on the Properties in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, and whether or not in the contemplation of the parties. Such laws shall include, but are not limited to, local, state and federal laws prohibiting discrimination in employment and public accommodations. Licensee always agrees to conduct the undertakings in a safe and prudent manner with full regard to the public safety and to observe all applicable regulations and requests of the City and other government agencies responsible for public safety. Licensee shall, at its sole expense, always procure and maintain in force during its use of the Properties all licenses or approvals necessary to conduct the undertaking.

4.4 Utilities. Licensee shall not connect to, or use, any utility systems or outlets unless such use is specifically authorized and approved by the utility owner in the undertaking.

4.5 City's and Licensee's Duties under License Agreement. City shall, at all times, comply with the terms and conditions of this License Agreement, including removal of any graffiti on the pathway and shall cause all necessary rights of way for the operation of the CV Link to remain in place. Licensee shall operate, maintain and replace, any shade structures, benches, trash cans, kiosks, bike racks, wayfinding signage, solar lights, sparkle grain concrete, seeded glass lithocrete, decomposed granite and landscaping installed by Licensee. Licensee will pursue sponsorships and funding for long term operations and

maintenance of the Project improvements, including all segments of CV Link. Licensee agrees that all its undertakings on the Properties under this License Agreement shall be consistent with the terms and conditions of the License Agreement and shall not cause the City to become non-compliant with said terms and conditions.

5. INSURANCE.

5.1 Minimum Requirements. Licensee must maintain in force, during the full term of the License Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$2,000,000 in aggregate and \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage;

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and

(c) Workers' Compensation Insurance in statutory amounts with Employer's Liability Coverage with limits of not less than \$1,000,000 each accident.

(d) Should any required insurance lapse during the term of this License Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this License Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this License Agreement effective on the date of such lapse of insurance.

(e) Before commencing any operations under this License Agreement, Licensee shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this License Agreement.

6. MISCELLANEOUS PROVISIONS.

6.1 No Assignment. Neither this License Agreement nor any duties or obligations hereunder may be assigned, conveyed or delegated by the Licensee prior to completion of the CV Link on the Properties unless first approved by the City by written instrument executed and approved in the same manner as this License Agreement.

6.2 No Joint Ventures or Partnership: Independent Licensee. This License Agreement does not create a partnership or joint venture between City and Licensee. Licensee shall be solely responsible for all matters relating to payment of its employees, including, without limitation, compliance with all federal, state or local law and regulations.

6.3 Impossibility of Performance. If, for any reason, an unforeseen event occurs which is beyond the control of the City and the Licensee, which event renders impossible the fulfillment of any term of this License Agreement, Licensee and the City shall have no right to, nor claim for, damages against the other.

6.4 Notices. Except as otherwise provided herein, any notices given under this License Agreement shall be addressed as follows:

To City: Charles P. McClendon
City Manager
City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234

To Licensee: Tom Kirk
Executive Director
Coachella Valley Association of Governments
74-199 El Paseo, Suite 100
Palm Desert, CA 92260

Notice shall be deemed (a) the date when it is deposited with the U.S. Post Office, if sent by first class or certified mail, (b) one (1) business day after the date when it is deposited with an overnight courier, if next business day delivery is required, (c) upon the date personal delivery is made, or (d) upon the date when it is sent by facsimile, if the sender receives a facsimile report confirming such delivery has been successful and the sender mails a copy of such notice to the other party by U.S. first-class mail on such date.

6.5 General Provision. This License Agreement may be amended or modified only in writing and signed and approved by City and Licensee. No waiver by any party of any of the provisions of this License Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. Except as expressly set forth herein to the contrary, all approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the City Manager or other authorized City official. This instrument (including the exhibits hereto) contains the entire License Agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. This License Agreement shall be governed by and subject to California law and the City's Municipal Code. If either party commences an action against the other or a dispute arises under this License Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. Subject to the prohibition against assignments or other transfers by Licensee hereunder, this License Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

SIGNATURES ON THE FOLLOWING PAGE

APPROVED AS TO FORM:
BURKE, WILLIAMS & SORENSEN

By: _____
Eric S. Vail, Burke
City Attorney

CITY:
CITY OF CATHEDRAL CITY,
a municipal corporation

By: _____
Name: Charles P. McClendon
Title: City Manager

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

By: _____
Michael Jenkins, Esq.

LICENSEE:
COACHELLA V ALLEY ASSOCIATION
OF GOVERNMENTS

By: _____
Name: Tom Kirk
Title: Executive Director

ATTEST:

Tracey R. Hermosillo, CMC
City Clerk

Exhibit A



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