

**COOPERATIVE AGREEMENT
BY AND BETWEEN
CVAG AND CITY OF CATHEDRAL CITY
for
Cathedral City Whitewater Channel Bike Path**

THIS AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the City of Cathedral City ("City"), and the Coachella Valley Association of Governments ("CVAG"), a California joint powers authority, (each a "Party," and collectively the "Parties," to this agreement,) and is made with reference to the following background facts and circumstances:

A. In 2008 and 2009, the City applied for and received funding for the design and construction of the Cathedral City Bike Trail ("CCBT"), a Class 1 bicycle path along the banks of the Whitewater Channel between 30th Avenue and Ramon Road, from two grants funded by the Caltrans Bicycle Transportation Account ("the BTA grants"), which funding may be lost if not utilized in the near future;

B. In 2012, CVAG began to study the possibility of the "CV Link" project, a multi-use roadway that, at various points, will be sited along the banks of the Whitewater Channel as it traverses the Coachella Valley and which is intended to offer pedestrians, bicyclists and those using low-speed electric vehicles a safe and convenient alternative to travel on existing roadways that are primarily intended for high-speed vehicular travel;

C. The CV Link project is in the very early planning stages. CVAG has contracted with Terra Nova to act as the consultant for the environmental services related to the CV Link project, including compliance with the California Environmental Quality Act; and CVAG has contracted with Alta Planning for design and outreach work related to the CV Link project;

D. Design, engineering and environmental review of the proposed model for the CV Link project is not complete, the project has not yet been approved, and construction is not expected to begin until the year 2017, or later, if the project is ultimately approved;

E. However, funding is immediately available to the City for the CCBT. Specifically, there is currently available to City, from one of the two BTA grants, a balance of \$195,576 for design, engineering, and environmental compliance for the CCBT. In addition, the sum of \$405,000 is available to the City from the second of the two BTA grants, which sum may be used for construction of the CCBT, which will be able to accommodate bicyclists, pedestrians and may be able to accommodate low-speed electric vehicles;

F. The Parties wish to enter into this cooperative agreement whereby the City will immediately utilize the BTA grant funds for the design, engineering, environmental compliance and construction of the CCBT consistent with the proposed CV Link model to allow the possibility that CVAG might later be able to assume responsibility for the operation and maintenance of the CCBT if the CV Link project is subsequently approved for construction;

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the Parties mutually agree as follows:

1. City has the option to contract with Terra Nova and Alta Planning for the environmental and planning services specific to the design of the CCBT as consistent as practicable with the proposed model for the remainder of the CV Link project. The cost of said services, which are estimated to be equal to the remaining amount of the first of the two BTA grants, shall be paid by City.

2. Although all decisions concerning engineering and environmental matters shall be at the sole discretion of the City, the final design of the CCBT shall be subject to review and reasonable approval by CVAG prior to the commencement of any construction. CVAG's review and reasonable approval shall be completed within thirty (30) days of submittal by the City.

3. City may then seek bids for the construction of the roadway portion of the CCBT, the specifications for which shall be as consistent as practicable with the proposed CV Link model; provided, however, that other amenities that might be proposed for the CV Link project may not be included in the design of the CCBT. Once bids have been received, and the entire cost of the construction is made certain, City shall advise CVAG and the Parties shall investigate additional sources of funding for any sums that exceed the balance of BTA grant funds then available to the City.

4. Once sufficient funding sources have been identified, City shall contract with the successful bidder for the construction of the CCBT. If CVAG's legislative body approves use of CV Link funds for the CCBT, CVAG shall reimburse City for costs in the manner provided hereinbelow. Notwithstanding any other provisions herein, City shall utilize all grant funds available to the City for the construction of the Cathedral City Path as the first source of funding. CVAG shall not be obligated for any monetary contributions that have not been approved and budgeted for the CCBT portion of the CV Link project.

5. At such time as CVAG's legislative body authorizes CVAG (or its contractor and/or agent) to do so, CVAG shall incorporate the CCBT into the CV Link project and thereafter assume responsibility for the operations and maintenance of the CCBT. However, until the CCBT is accepted by CVAG and incorporated into the CV Link project, Cathedral City shall be solely responsible for the operation and maintenance of the CCBT.

MISCELLANEOUS PROVISIONS

6. At such time as funds are authorized and budgeted by CVAG for reimbursement to City of construction costs associated with the CCBT, reimbursement shall be made as follows: The City shall be responsible for initial payment of all covered costs as they are incurred. Following payment of such costs, City shall submit invoices to CVAG requesting reimbursement. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to City, and documents evidencing City's payment of the invoices or demands for payment. City shall also submit a Project Completion Report, in a form acceptable to CVAG, with each statement. City shall submit invoices not more often than monthly and not less often than quarterly.

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

6.2 If a post-payment audit or review indicates that CVAG has provided reimbursement to City in an amount in excess of that permitted under this agreement, City shall reimburse CVAG for the excess or ineligible payments within thirty (30) days of notification by CVAG.

6.3 Prior to any final payment to City by CVAG, a final report shall be submitted to CVAG by City containing a record of all payments made for the CCBT 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 for the CV Link project.

6.4 The format used for all bids solicited by City for the CCBT shall require itemization sufficient to allow quantities of each bid item to be easily discernible. If requested by CVAG, it shall be the responsibility of City to determine what, if any, portion of the work is an enhancement to any specifications adopted for the CV Link model, for which there shall be no reimbursement.

6.5 City shall maintain an accounting of all funds received from CVAG pursuant to this agreement in accordance with generally accepted accounting principles. City agrees to keep all contracts and records for a period of not less than three years from the date a notice of completion is filed by the City for the CCBT; or, if the CCBT is not the type of project for which a notice of completion would normally be recorded, for three years from the date of completion. The City may keep the records in either electronic or hard copy format. City shall permit CVAG, at any reasonable time, upon reasonable notice, to inspect any records maintained in connection with the CCBT. 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.

6.6 City shall allow CVAG access to and use of all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of the planning, approval and construction of the CCBT. Any copies

of said originals obtained by CVAG may be used, reused, or otherwise disposed of by CVAG without the permission of City.

7. The occurrence of any one or more of the following events shall, at the non-defaulting Party's option, constitute an Event of Default and the defaulting Party shall provide the other Party with immediate notice thereof.

7.1 Any warranty, representation, statement, report or certificate made or delivered to the other Party or any of its officers, employees or agents, now or hereafter, which is incorrect, false, untrue or misleading in any material respect;

7.2 A Party 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 CCBT; or,

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

8. No waiver of any Event of Default or breach by one Party hereunder shall be implied from any omission by any 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 any other Party shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act.

9. This agreement is made and entered into for the sole protection and benefit of the City and CVAG, and no third person shall have any right of action under this agreement.

10. 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 venturer with City as to the CCBT. The City 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 City related to the CCBT or taken in the performance of this agreement or any agreement entered into by City with reference to the CCBT. CVAG shall assume the defense of, indemnify and hold harmless the City, 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 (a) the actions of CVAG taken in the performance of this agreement or (b) litigation concerning compliance with environmental laws specific to CV Link and not associated with the CCBT prior to any subsequent incorporation into the CV Link project.

11. City 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 City on each contract. City 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.

12. 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 the Parties. 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 the City from full and timely performance in accordance with the terms of this agreement.

13. The City and CVAG mutually warrant that all aspects of the CCBT shall be undertaken in compliance with all applicable local, state and federal rules, regulations and laws. The Parties will execute and deliver to each other such further documents and do other acts and things as are reasonably requested in order to comply fully with all applicable requirements and to effect fully the purposes of this agreement.

14. This agreement may not be assigned by either Party without the express written consent of the other Party.

15. The Parties and their successors in interest and assigns shall be bound by all the provisions contained in this agreement.

16. No officer or employee of either Party shall be personally liable to the other Party, or any successor in interest, in the event of any default or breach by either Party or for any amount which may become due to either Party or to its successors, or for breach of any obligation of the terms of this agreement.

17. 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.

18. No officer or employee of either Party 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.

19. City 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.

20. 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 **CVAG:** Tom Kirk, Executive Director
Coachella Valley Association of Governments
73-710 Fred Waring Drive
Palm Desert, CA 92260
Telephone: (760) 346-1127
FAX No.: (760) 340-5949

If to **CITY:** Charles P. McClendon, City Manager
City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Telephone: (760) 770-0340
FAX No.: (760) 770-0399

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.

21. This agreement sets out 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.

22. 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.

23. In the event any 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.

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

25. 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.

26. Each Party 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.

27. 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:

CITY OF CATHEDRAL CITY

By: _____
Charles P. McClendon
City Manager

By: _____
Stan Henry, Mayor

CVAG

By: _____
Tom Kirk, Executive Director