



## City Council Staff Report

Date: NOVEMBER 5, 2008 CONSENT CALENDAR

Subject: APPROVAL OF REIMBURSEMENT AGREEMENT WITH COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS (CVAG) FOR THE PROJECT STUDY REPORT ON THE WIDENING OF RAMON ROAD BRIDGE OVER THE WHITEWATER RIVER CHANNEL.

From: City Manager

Initiated By: Director of Public Works/City Engineer

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### SUMMARY

Approval of the reimbursement agreement will provide 75% of the estimated project costs of \$100,000 for a Project Study Report (PSR) for the widening of Ramon Road Bridge and the associated street improvements across the Whitewater River Channel.

### RECOMMENDATION:

- 1) ADOPT RESOLUTION NO. \_\_\_\_\_, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA APPROVING A REIMBURSEMENT AGREEMENT WITH THE COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS FOR THE PROJECT STUDY REPORT FOR THE WIDENING OF THE RAMON ROAD BRIDGE OVER THE WHITEWATER RIVER CHANNEL IN THE AMOUNT OF \$75,000 (75% OF \$100,000).
- 2) AUTHORIZE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS.

### STAFF ANALYSIS:

On January 30, 2008, the City of Palm Springs (CPS), along with the City of Cathedral City (CCC) and the Agua Caliente Band of Cahuilla Indians (ACBCI) submitted a letter to CVAG requesting funding of a PSR to identify the project details and overall scope for the widening of Ramon Road between Landau Boulevard and San Luis Rey Drive, including an application for funding for a Whitewater River Bridge Widening. Since the project is listed in the 2005 Transportation Project Prioritization Study (TPPS), as billable project number B0059 and is listed as a backbone project, CVAG Executive Committee agreed to provide 75% funding of an estimated \$100,000 PSR at their meeting of June 30, 2008. We have recently been informed by Caltrans that in their

biannual inspection of the Ramon Road Bridge, the bridge is now classified as "structurally deficient" and therefore eligible for Federal Highway Bridge Program Funding (FHBP). The PSR intends to include making application for the FHBP Funds. In light of the Executive Committee's approval of our request CVAG has submitted a reimbursement agreement which, when approved by the City, will facilitate the use of Measure A Funding for the report.

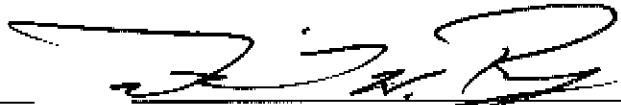
The letter that was sent to CVAG was a joint effort between CPS, CCC and ACBCI, therefore the 25% Local Match is to be shared under a separate agreement between CPS, CCC and ACBCI. However, CPS as the lead agency, will be the party named in the agreement with CVAG.

FISCAL IMPACT:

Approval of this agreement will formally authorize the use of \$75,000 in Measure A Funds for the PSR Phase of the project. CPS share of the Local Match is estimated to be \$8,234 and is available in Measure A Account 134-4498-50245 (Ramon Widening Study).



\_\_\_\_\_  
David J. Barakian  
Director of Public Works/City Engineer



\_\_\_\_\_  
David H. Ready  
City Manager



\_\_\_\_\_  
Thomas J. Wilson  
Assistant City Manager-Development Service

Attachments:

- 1) Agreement
- 2) Resolution

**CVAG - CITY OF PALM SPRINGS**  
**REIMBURSEMENT AGREEMENT**

**"Widening of the Ramon Road Bridge over the Whitewater River Channel"**

**PROJECT STUDY REPORT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Palm Springs ("Agency"), and the Coachella Valley Association of Governments ("CVAG"), a California joint powers agency, and is made with reference to the following background facts and circumstances.

Whereas, the "Coachella Valley Area Transportation Study," a valley-wide study prepared under the auspices of CVAG, has identified various transportation and highway projects throughout the Coachella Valley as projects of regional importance. These projects are listed in the 2005 Update Transportation Project Prioritization Study (TPPS) document, and;

Approval of a highway financing measure by the voters of Riverside County in November, 1988, ("Measure A,"), as well as the approval of an extension by the voters in November, 2000, 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;

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

Under CVAG's policy of funding eligible projects by member jurisdictions, effective January 1, 2007, a jurisdiction pays one-quarter of the eligible costs (the "Local Share") and CVAG pays the other three-quarters (the "Regional Share"). Historically, the CVAG Regional Share has been paid as a reimbursement to the jurisdiction, as invoices are submitted and approved, and;

CVAG has determined that as to member jurisdictions that do not participate in the TUMF program, projects will continue to go forward under the existing Reimbursement Policy, and;

Agency desires to proceed with a project known as **Widening of the Ramon Road Bridge over the Whitewater River Channel**. CVAG's Regional Share of the Project costs is not-to-exceed \$75,000 (75% of \$100,000). Agency shall only submit the costs related to this "Project Study Report" Phase of the Project.

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 the CVAG 2005 Transportation Project Prioritization Study updated list of projects. The Project is one of those projects and is therefore eligible.

2. The Project is generally described and referred to as **Widening of the Ramon Road Bridge over the Whitewater River Channel** "Project Study Report", hereinafter the "Project."

3. Any excess property purchased to secure the necessary right-of-way for the Project will be deemed to belong to the Regional Arterial Program. Excess property will be disposed of by agreement with the Agency partners and in the best interests of the Regional Arterial Program in order to recapture funds expended.

4. The scope of work for 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," entitled "Estimate of Cost," attached hereto and made a part hereof. The cost estimate includes 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 the amount Agency shall pay to outside contractors in connection with the Project.

5. It is the agreement between CVAG and Agency that, of the total estimated cost of the Project (\$100,000), CVAG shall pay not-to-exceed \$75,000, and Agency shall pay one hundred percent (100%) of all costs not eligible for reimbursement by CVAG.

6. Agency agrees to seek reimbursement of seventy-five percent of only those costs, up to the not-to-exceed limit, which are eligible for reimbursement by CVAG.

6.1 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.

6.2 Agency shall, at the design stage of the Project, identify a project specific "Project Ratio" for the construction phase of the project that distinguishes between **Capacity Enhancement** items of work, **Rehabilitation** items of work, or **Other** items of work. Agency shall apply that "Project Ratio" to the project construction cost and provide CVAG with supporting documents that will clearly identify **Capacity Enhancement** costs eligible for payment with TUMF, **Rehabilitation** costs eligible for

payment with Measure "A", and **Other** costs that are not eligible for reimbursement by CVAG. All Invoices submitted to CVAG for reimbursement, shall include a table identifying **Capacity Enhancement** costs eligible for payment with TUMF, **Rehabilitation** costs eligible for payment with Measure "A", and **Other** costs that are not eligible for reimbursement by CVAG.

6.3 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.

6.4 If a post-payment audit or review indicates that CVAG has provided reimbursement to Agency in an amount in excess of the percentage of eligible costs set for this project, 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.

7. 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.

8. 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. It shall be the responsibility of Agency to determine what quantity is for Capacity Enhancement and/or Rehabilitation, and to provide CVAG staff with that information.

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 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.

10. 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.

11. 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.

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 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.

15. 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 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.

16. 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.

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. 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.

20. This Agreement may not be assigned without the express written consent of CVAG 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 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.

25. Agency warrants that the funds received by CVAG 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 Agency:           City of Palm Springs  
3200 East Tahquitz Canyon Way  
Palm Springs, CA 92262  
Attn: City Manager  
Telephone: (760) 323-8350  
FAX No.: (760) 323-8207

If to CVAG:             CVAG  
73-710 Fred Waring Drive  
Palm Desert, CA 92260  
Attn: Deputy Executive Director  
Telephone: (760) 346-1127  
FAX No.: (760) 340-5949

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. 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.

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:

ATTEST:

CITY OF PALM SPRINGS


By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Mayor

ATTEST:

CVAG

By: \_\_\_\_\_  
John Wohlmuth,  
Executive Director

By:  \_\_\_\_\_  
Richard W. Kite  
Chair

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**WIDENING OF THE RAMON ROAD BRIDGE OVER THE WHITEWATER RIVER  
CHANNEL**

**PROJECT STUDY REPORT**

The scope of work will consist of preparing a Project Study Report (PSR) for the **Widening of the Ramon Road Bridge over the Whitewater River Channel** Project, and all other needed reports to comply with the latest CALTRANS' regulations, policies, procedures, manuals and standards including compliance with Federal Highway Administration (FHWA) requirements.

The project will be funded using TUMF/Measure "A" Funds. The PSR will need to be prepared to identify various types of alternatives to determine the most feasible design with regards to traffic demand and right-of-way availability. The alternatives will be acceptable under Caltrans and FHWA guidelines and allow project programming in the RTP and the STIP. The PSR must also provide preliminary engineering information to a level to determine if a particular project is feasible and fundable and supports early environmental documentation.

**EXHIBIT "B"**

**ESTIMATE OF COST**

**WIDENING OF THE RAMON ROAD BRIDGE OVER THE WHITEWATER RIVER  
CHANNEL**

**PROJECT STUDY REPORT**

**(FROM ESTIMATE PROVIDED BY THE CITY OF PALM SPRINGS)**

CVAG will only pay for the tasks related to the Project Study Report which are eligible for reimbursement as outlined in the adopted Project Cost Determination and Expense Eligibility manual. By this agreement, CVAG will pay an amount not to exceed \$75,000, being 75% of estimated costs for this project.

Estimated Cost for the PSR is \$100,000

**EXHIBIT "C"**

**PROJECT SCHEDULE**

**WIDENING OF THE RAMON ROAD BRIDGE OVER THE WHITEWATER RIVER  
CHANNEL**

**PROJECT STUDY REPORT**

No schedule has been set for this project at this time.

RESOLUTION NO.

A RESOLUTION OF THE CITY OF PALM SPRINGS APPROVING A REIMBURSEMENT AGREEMENT WITH THE COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS FOR A PROJECT STUDY REPORT OF THE RAMON ROAD BRIDGE OVER THE WHITEWATER RIVER CHANNEL AND RELATED STREET IMPROVEMENTS

WHEREAS, the "Coachella Valley Area Transportation Study", a valley-wide study prepared under the auspices of CVAG, has identified various transportation and highway projects throughout the Coachella Valley as projects of regional importance. These projects are listed in the 2005 Update of the Transportation Project Prioritization Study (TPPS) document; and

WHEREAS, approval of a highway financing measure by the voters of Riverside County in November, 1988, ("Measure A"), as well as the approval of an extension by the voters in November, 2000, has created a source of funds with which to construct such projects; and

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

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

WHEREAS, Under CVAG's policy of funding eligible projects by member jurisdictions, effective January 1, 2007, a jurisdiction pays one-quarter of the eligible costs (the "Local Share") and CVAG pays the other three-quarters (the "Regional Share"). Historically, the CVAG Regional Share has been paid as a reimbursement to the jurisdiction, as invoices are submitted and approved, and;

WHEREAS, City of Palm Springs ("Agency") desires to proceed with a project known as Widening of the Ramon Road Bridge over the Whitewater River Channel. CVAG's Regional Share of the Project costs is not-to-exceed \$75,000 (75% of \$100,000), and;

WHEREAS, on June 30, 2008 the CVAG Executive Committee authorized payment of 75% of the estimated cost of the Project Study Report.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Palm Springs, California, as follows:

Section 1. The Reimbursement Agreement with CVAG for the Project Study Report for the Ramon Road Bridge over the Whitewater River Channel and related street improvements is hereby approved, and;

Section 2. The City Manager is authorized to execute all necessary documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Palm Springs, California, held November 5, 2008.

CITY OF PALM SPRINGS

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David H. Ready  
City Manager

ATTEST:

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James Thompson  
City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, California, hereby certify that Resolution No. \_\_\_\_\_, is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs, California on November 5, 2008, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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James Thompson, City Clerk  
City of Palm Springs, California