



City Council Staff Report

Date: July 20, 2011

CONSENT CALENDAR

Subject: APPROVAL OF SUB-REIMBURSEMENT AGREEMENT WITH CVAG FOR THE LOCAL SHARE OF COSTS FOR THE INTERSTATE 10 INTERCHANGE PROJECT AT RAMON ROAD/BOB HOPE DRIVE

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

On June 6, 2011, the CVAG Executive Committee approved an amended Sub-Reimbursement Agreement for the local share of costs for the Interstate 10 Interchange Project at Ramon Road/Bob Hope Drive. Approval of this agreement formally obligates the City to pay CVAG its fair share of costs towards this I-10 Interchange Project.

RECOMMENDATION:

- 1) Approve Agreement No. _____, a Sub-Reimbursement Agreement by and between CVAG, County of Riverside, City of Palm Springs, City of Cathedral City, City of Rancho Mirage, and City of Desert Hot Springs for the Interchange Project at I-10 and Ramon Road/Bob Hope Drive; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

On June 6, 2011, the CVAG Executive Committee approved an amended Sub-Reimbursement Agreement for the local share of costs for the Interstate 10 Interchange Project at Ramon Road/Bob Hope Drive. The background for this report is provided in the CVAG Executive Committee staff report of June 6, 2011, included as Attachment 1.

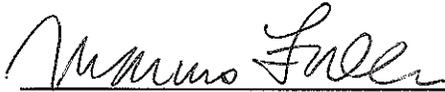
FISCAL IMPACT:

Approval of the agreement obligates the City to pay CVAG its fair share of costs towards this I-10 Interchange Project, currently estimated at \$120,810. Sufficient funds will be available in account 134-4498-50293.

SUBMITTED:

Prepared by:

Recommended by:



Marcus L. Fuller
Assistant Director of Public Works



David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



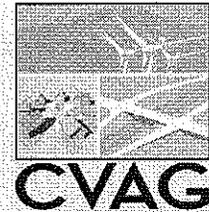
for David H. Ready, City Manager

Attachments:

1. CVAG Executive Committee staff report of June 6, 2011
2. Agreement

ITEM 7E

**Coachella Valley Association of Governments
Executive Committee
June 6, 2011**



Staff Report

Subject: Amended Sub-Reimbursement Agreement for the Local Share of Costs for the Interstate 10 Interchange Project at Ramon Road/ Bob Hope Drive

Contact: Allyn Waggle, Deputy Executive Director (awaggle@cvag.org)

Recommendation: Approve Amended Sub-Reimbursement Agreement for the Local Share of Costs for the Interstate 10 Interchange Project at Ramon Road/ Bob Hope Drive.

Transportation Committee: CONCURS (Meeting of April 4th)

Technical Advisory Committee: CONCURS (Meeting of May 9th. This item was continued from the March 14 and April 11, 2011, Technical Advisory Committee meetings.)

Background: In December 2009 the Executive Committee approved an agreement with Urban Crossroads for the Proportionate Cost Share Analysis for the Bob Hope Drive/ Ramon Road/ I-10 and the Indian Canyon/ I-10 Interchange Projects in an Amount Not to Exceed \$17,165.12. That analysis has been completed and the results are being presented in this agenda for approval.

In September 2003 the Executive Committee approved the results of an earlier, identical analysis for these two interchanges as well as the I-10 interchanges at Palm Drive/ Gene Autry Trail, at Date Palm Drive and at Jefferson Street. In both instances, this analysis is meant to reflect that the improvement of these five interchanges will benefit not only the jurisdictions in which they are located, but any jurisdiction in the near vicinity; the closer and/ or more direct access to the interchange presumes the greater the benefit. Based on this earlier analysis, the Executive Committee adopted a distribution formula for the 25% local share of costs, and CVAG entered agreements with the appropriate jurisdictions for payment of those costs.

However, after several years of planning and design, when the interchange projects were being advertised for bids, sometimes land in the service area of the projects had been incorporated into a city's boundary, or perhaps the land use changed, thus changing the traffic load. Since these changes could not be reflected in the adoption of the earlier distribution formula, it was determined a more equitable process would be to conduct a proportionate share analysis nearer the actual construction date so that up-to-date information regarding jurisdiction and land use could be included in the proportionate share of the local portion of project costs.

In December 2008 CVAG entered a Cooperative Funding Agreement with Caltrans for construction of the Ramon Road/ Bob Hope Drive/ Interstate 10 Interchange Project, which did not specify the participation of any local CVAG jurisdictions. However, as reported above, in September 2003 the Executive Committee approved a percentage distribution formula for the 25% local share of costs for this project. In order to establish a repayment responsibility for the

appropriate jurisdictions, in March 2010 the Executive Committee approved a Sub-Reimbursement Agreement for the Ramon Road/ Bob Hope Drive/ Interstate 10 Interchange Project to confirm the commitment of Riverside County and the cities of Rancho Mirage, Palm Springs and Cathedral City for their estimated share of costs. It is now necessary to amend that Sub-Reimbursement Agreement to reflect the most recent proportionate cost share analysis, and to add the City of Desert Hot Springs as a responsible party, as reflected in the table below. The current, estimated 25% Local Share of costs for the Ramon Road/ Bob Hope Drive/ I-10 interchange project is \$541,750.

	Ramon Rd./ Bob Hope Dr. 2003	Ramon Rd./ Bob Hope Dr. 2011
Desert Hot Springs	0.00%	3.70%
Palm Springs	17.76%	22.30%
Cathedral City	16.30%	26.70%
Rancho Mirage	18.84%	11.30%
Riverside County	47.10%	36.00%

Fiscal Analysis: There is no additional cost for the recommended action.

Contract Finalization: Prior to execution, minor changes/revisions may be made by CVAG's Executive Director and/ or Legal Counsel to the amended Sub-Reimbursement Agreement for clarification purposes.

AMENDED

SUB-REIMBURSEMENT AGREEMENT

BY AND BETWEEN

**CVAG, COUNTY OF RIVERSIDE, CITY OF PALM SPRINGS, CITY OF CATHEDRAL CITY
CITY OF RANCHO MIRAGE AND CITY OF DESERT HOT SPRINGS**

For

Interchange Project at I-10 and Ramon Road/ Bob Hope Drive

THIS AMENDED AGREEMENT is made and entered into this ___ day of _____, 2011 by and between the **Coachella Valley Association of Governments ("CVAG")**, a California joint powers agency, and the **County of Riverside, the City of Palm Springs, the City of Cathedral City, the City of Rancho Mirage and the City of Desert Hot Springs ("Local Agencies")**. This **AMENDED AGREEMENT** replaces the like-named Agreement approved by the Executive Committee at their meeting of September 27, 2010. This Amended Agreement is presented with reference to the following background facts and circumstances:

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 Transportation Project Prioritization Study (the "TPPS"), as updated from time to time and;

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

Under CVAG's reimbursement policy for administering regional funds for eligible projects undertaken by its member jurisdictions, the cost of the eligible project is split into a "Local Share" and a "Regional Share." The "Regional Share," paid by CVAG from regional funds, is equal to seventy-five percent (75%) of eligible costs, as defined by CVAG's Policies and Procedures Manual in effect at the time CVAG is invoiced by the lead agency for reimbursement. All remaining costs constitute the "Local Share."

Although sometimes referred to as the "Local 25% Share," the Local Share includes not only the remaining twenty-five percent (25%) of eligible costs as defined by CVAG policy, but also one hundred percent (100%) of all ineligible project costs.

As determined by a benefit assessment evaluation for each project, the jurisdiction within which a regional project is sited, as well as those jurisdictions in the near vicinity most-immediately benefited, are assessed a specified portion of the Local Share. Accordingly, as to each project, and after extensive input from its member jurisdictions, CVAG has adopted a schedule of the percentages of the Local Share to be charged to each of the responsible jurisdictions based on the ratio of trips generated by each of the respective jurisdictions.

As each project proceeds, CVAG enters into a reimbursement agreement with the lead agency for the regional project. Pursuant to that reimbursement agreement, CVAG is invoiced and makes reimbursement for certain project costs.

Now, therefore, this Agreement is intended to provide for collection and payment of Local Agency's applicable percentage of the Local Share of the costs of the below-described regional project.

1. Local Agency agrees to contribute its percentage assessment of the Local Share as shown below for the **I-10 Interchange at Ramon Road/Bob Hope Drive Project** ("Project"):

SCHEDULE OF LOCAL SHARE OBLIGATIONS:

Jurisdictions	FIXED % Assessment of Local Share	CURRENT ESTIMATED Cost
County of Riverside	36.00%	\$ 195,030
Palm Springs	22.30%	\$ 120,810
Cathedral City	26.70%	\$ 144,647
Rancho Mirage	11.30%	\$ 61,218
Desert Hot Springs	3.70%	\$ 20,045

2. CVAG has entered into an agreement ("Reimbursement Agreement") with the State of California, Department of Transportation ("Caltrans,") the lead agency for the Project, concerning the administration of regional funding for the cost of the Project.

3. The terms of the Reimbursement Agreement and the contract(s) by and between Caltrans and the contractor(s) for the Project shall define the scope of the Project.

4. Upon final payment from CVAG to Caltrans for reimbursement of the Regional Share of the Project costs, CVAG shall obtain a final report containing a record of all costs incurred with respect to the Project and the source of all payments applied toward such costs.

5. Upon receipt of the Final Report, CVAG shall prepare a schedule of the local share obligations for the Project and invoice each responsible jurisdiction for the unpaid balance of its percentage share. Within sixty (60) days of the date of the receipt of said invoice, Local Agency shall transmit to CVAG the entire unpaid balance of the Local Share assessed to Local Agency.

6. Except as to any portion of the Local Agency's percentage assessment that CVAG previously advanced to Caltrans or other third party, all monies paid to CVAG by the Local Agency as its percentage assessment for the Project shall be held by CVAG for the benefit of, and subsequent transfer to, Caltrans. However, nothing herein shall prevent Caltrans and Local Agency from entering into an agreement prior to the completion of the Project whereby Local Agency agrees to pay all or some of its Local Share directly to Caltrans. Any such payments shall be shown in the Final Report as credits to be applied as offsets against Local Agency's assessed share of the Project costs.

7. In the event Local Agency disputes the invoiced assessment, the following procedures shall apply:

7.1. Local Agency may request supporting documentation consistent with the lead agency's obligation to CVAG as set out in the Reimbursement Agreement. Upon documentation that the subject expense has been paid as a cost of the Project, Local Agency shall pay the corresponding invoice within five business days after receipt of said documentation.

7.2 Subject only to appeal to CVAG's Executive Committee, CVAG's Executive Director shall be the final arbiter of any dispute as to sums owed by the Local Agency for its percentage assessment of the Local Share for the Project. As to any portion of the Local Agency's percentage assessment that CVAG previously advanced for the Project or for which CVAG is otherwise obligated to reimburse to Caltrans or any other third party, CVAG's approval of said Project costs shall be final and not subject to challenge by Local Agency.

7.3 Neither the pendency of dispute nor its consideration by CVAG will excuse Local Agency from full and timely performance in accordance with the terms of this Agreement.

8. CVAG shall permit Local Agency, at any reasonable time, upon reasonable notice, to inspect any records maintained by the lead agency for the Project and available to CVAG pursuant to the terms of the Reimbursement Agreement, as well as any records obtained and maintained by CVAG in the regular course of its administration of the regional funds for the Project.

9. The occurrence of any one or more of the following events shall, at CVAG's option, constitute an event of default and Local Agency shall provide CVAG with immediate notice thereof:

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

9.2 Local 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

9.3 There shall occur any of the following: dissolution, termination of existence or insolvency of Local Agency; the commencement of any proceeding under any bankruptcy or insolvency law by or against Local Agency; entry of a court order which enjoins, restrains or in any way prevents Local Agency 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 Local Agency 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 a party to the construction or in ownership or a partner or joint venturer with any other entity with respect to the Project. Local 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 Local Agency related to the Project or taken in the performance of this agreement or any other agreement entered into by Local Agency with reference to the Project. CVAG shall assume the defense of, indemnify and hold harmless Local 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 or inactions of CVAG taken in the performance of this agreement or any other agreement entered into by CVAG with reference to the Project.

13. This agreement may not be assigned without the express written consent of CVAG first being obtained.

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

15. No officer or employee of a party to this agreement shall be personally liable to any other party to this agreement, or any successor in interest, in the event of any default or breach or for any amount which may become due to a party or to its successor.

16. 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 affects his or her personal interest or the interest of any corporation, partnership or association in which she or he is, directly or indirectly, interested.

17. CVAG warrants that the funds received from CVAG pursuant to this agreement shall only be used in a manner consistent with CVAG's reimbursement policy for regional projects 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 herein.

18. 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 County of Riverside:	Juan C. Perez, Director Riverside County Transportation Department 4080 Lemon Street, 8 th Floor P.O. Box 1090 Riverside, CA 92502-1090 Telephone: (951) 955-6740 Fax.: (951) 955-3198
If to City of Palm Springs:	David Ready, City Manager City of Palm Springs 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262 Telephone: (760) 322-8350 Fax.: (760) 323-8207
If to City of Cathedral City:	Donald Bradley, City Manager City of Cathedral City 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234 Telephone: (760) 770-0372 Fax.: (760) 770-0340
If to City of Rancho Mirage:	Patrick Pratt, City Manager City of Rancho Mirage 69-825 Highway 111 Rancho Mirage, CA 92270 Telephone: (760) 324-4511 Fax.: (760) 324-8830
If to City of Desert Hot Springs	Rick Daniels, City Manager City of Desert Hot Springs 65-950 Pierson Boulevard Desert Hot Springs, CA 92240 Telephone: (760) 329-6411 Fax: (760) 288-3129
If to CVAG:	Tom Kirk, Executive Director 73-710 Fred Waring Drive Palm Desert, CA 92260 Attn: Deputy Executive Director Telephone: (760) 346-1127 Fax.: (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.

19. This agreement contains 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.

20. 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.

21. In the event a 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.

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

23. 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.

24. Local 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.

25. 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.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives on this date:

ATTEST

COUNTY OF RIVERSIDE

By: _____
Clerk of the Board

By: _____
Bob Buster
Chairman

ATTEST

CITY OF PALM SPRINGS

By: _____

By: _____
Stephen Pougnet
Mayor

ATTEST

CITY OF CATHEDRAL CITY

By: _____

By: _____
Kathleen De Rosa
Mayor

ATTEST

CITY OF RANCHO MIRAGE

By: _____

By: _____
G. Dana Hobart
Mayor

ATTEST

CITY OF DESERT HOT SPRINGS

By: _____

By: _____
Yvonne Parks
Mayor

ATTEST:

CVAG

By: _____
Tom Kirk
Executive Director

By: Yvonne Parks
Yvonne Parks
Chair

