

08-Riv-10-PM 42.4/43.9
I-10/Bob Hope Drive
Construct New Interchange
EA 456001
District Agreement No. 8-1379

**CONSTRUCTION
COOPERATIVE AGREEMENT**

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2009 is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

COACHELLA VALLEY ASSOCIATION
OF GOVERNMENTS, a public entity,
referred to as "CVAG."

and

COUNTY OF RIVERSIDE, a political
subdivision of the State of California, referred
to herein as "COUNTY."

RECITALS

1. STATE, CVAG, and COUNTY pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within COUNTY's jurisdiction.
2. STATE, CVAG, and COUNTY intend to construct the Interstate 10 (I-10)/Bob Hope Drive extension and interchange realignment with Ramon Road, near the Thousand Palms area, referred to herein as "PROJECT."
3. CVAG agrees to be responsible for one hundred (100%) percent of all PROJECT construction capital and support costs (of which a portion will be funded out of STATE's Transportation Improvement Program/Regional Improvement Program [STIP/RIP] funding source in the amount not to exceed \$40,341,000. The PROJECT cost estimate is \$52,026,000, as shown on Exhibit A, attached hereto and made a part of this Agreement. If it becomes necessary for an increase in PROJECT funding, said increase will be paid in full by CVAG, using non-State funding sources.
4. COUNTY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. COUNTY will undertake HM-1 management activities with minimum impact to PROJECT schedule.

5. STATE, in support of PROJECT construction, will advertise, award, and administer the PROJECT construction contract utilizing STATE and consultant personnel to provide a Resident Engineer (and a bridge representative when necessary) and such other construction related engineering, inspection and testing as may be required for satisfactory completion of PROJECT, which construction support activities are referred to herein as "SERVICES."
6. STATE's Independent Quality Assurance (IQA) and Independent Assurance Testing of PROJECT will be borne by STATE.
7. PROJECT was developed by STATE.
8. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
9. The parties now define herein below the terms and conditions under which PROJECT is to be constructed, financed, owned, operated, and maintained.

SECTION I

STATE AGREES:

1. To provide at CVAG's cost, SERVICES for PROJECT.
2. To have PROJECT constructed at CVAG's cost, by contract in accordance with Plans, Specifications, and Estimates (PS&E) prepared by STATE.
3. To provide, at CVAG's cost, any "State-furnished material" as shown on the PROJECT PS&E or as determined during construction of PROJECT.
4. To perform source inspection as outlined in STATE's Construction Manual. CVAG shall reimburse STATE for all direct and indirect costs incurred for any source inspection performed by STATE.
5. To submit to CVAG, an invoice for a deposit in the amount of \$216,000 thirty (30) days prior to STATE's bid advertising date for a contract to construct PROJECT. Said deposit represents one (1) month of the estimated construction capital costs, estimated to be \$180,000, and for two (2) months of the estimated construction SERVICES estimated to be \$36,000, to be paid from CVAG's Transportation Uniform Mitigation Fee (TUMF) and/or Measure A funding sources. Thereafter, STATE shall prepare and submit to CVAG, in arrears, monthly billing statements for a portion of CVAG's share of the actual expenditures for construction and SERVICES cost being paid from CVAG's TUMF and/or Measure A funding sources.

6. To submit an invoice to CVAG for the estimated direct and indirect cost of "State-furnished material" and source inspection prior to start of PROJECT construction and upon receipt of said estimate from STATE's representative.
7. Upon completion of PROJECT and all work incidental thereto, to furnish CVAG with a detailed statement of the State-furnished materials and source inspection costs to be borne by CVAG. To thereafter refund to CVAG, promptly after completion of STATE's final accounting of said PROJECT costs, any amount of CVAG's deposits, required in Articles 5 & 6 of Section I, remaining after actual State-furnished materials and source inspection costs to be borne by CVAG have been deducted or to bill CVAG for any additional amount required to complete CVAG's financial obligations assumed pursuant to this Agreement.
8. To submit a quarterly construction progress report to CVAG and COUNTY which describes the work performed and completed during the reporting period with pertinent contract data such as change orders issued, cumulative costs of change orders, progress payments made (reported in dollars), and percentage progress achieved to date, all in accordance with STATE's standard accounting practices.
9. STATE's IQA and Independent Assurance Testing of PROJECT will be borne by STATE.
10. To allow on the site of PROJECT, field site representatives of CVAG and COUNTY, who are qualified licensed civil engineers in the State of California, to represent CVAG and COUNTY during the construction of PROJECT.
11. To consult with CVAG and COUNTY on all change orders for PROJECT with an estimated cost over \$50,000 before implementation except when the safety of motorists and/or pedestrians or the protection of property requires the immediate issuance of that change order.
12. Upon completion of PROJECT and all work incidental thereto, to furnish CVAG with a detailed statement of the total actual costs of construction and SERVICES for PROJECT, including the costs of any claims related to the construction contract which have been allowed to the construction contractor pursuant to the construction contract administrative claims process or arbitration and all defense costs related thereto that were incurred by STATE. STATE thereafter shall refund to CVAG promptly after completion of STATE's final accounting of costs for PROJECT any amount of CVAG's payments to STATE remaining after actual costs to be borne by CVAG have been deducted or STATE shall invoice CVAG for any additional amounts required to complete CVAG's financial obligations assumed pursuant to this Agreement.
13. The execution of this Agreement shall give authority to STATE and its consultants and contractors to enter COUNTY right of way to perform required Construction work as more specifically defined elsewhere in this Agreement. No separate application for

permits to COUNTY will be necessary to authorize entry of STATE onto COUNTY right of way.

14. To provide a Construction Zone Enhancement Enforcement Program (COZEEP) by contracting directly with the California Highway Patrol (CHP) for all traffic restrictions as outlined in STATE's Construction Manual.

SECTION II

CVAG AGREES:

1. To be responsible for one hundred percent (100%) of the total actual PROJECT capital construction costs (of which a portion will be funded out of STATE's STIP/RIP funding allocated for the PROJECT in the amount of \$34,912,000, with the balance to be paid by local funding sources. The total estimated capital construction costs are \$46,597,000, including but not limited to the cost of materials furnished by STATE, COZEEP, supplemental work, change orders, claims related to the construction contract paid to the construction contractor, including those paid as a result of STATE's administrative claims process and/or as an award in related arbitration, and the cost of STATE's defense of all PROJECT-related claims for compensation for construction services which may be filed by said contractor. The actual construction costs of PROJECT shall be determined only after completion of all work, the closure of all claims for compensation for construction services, and upon final accounting of all costs for construction of the PROJECT. If it becomes necessary for an increase in PROJECT capital funding, said increase will be paid in full by CVAG, using local funding sources.
2. To be responsible for one hundred percent (100%) of the actual PROJECT support costs which will be funded out of STATE's STIP/RIP funding allocated for the PROJECT in the amount of \$5,429,000, which includes the cost of SERVICES. Said PROJECT support costs shall include costs of providing personnel resources and their equipment and all direct and indirect costs (functional and administrative overhead assessment) attributable to PROJECT support applied in accordance with STATE's standard accounting practices and procedures. The actual cost of PROJECT support shall be determined only after completion of all work, the closure of all claims, and upon final accounting of all costs for PROJECT. If it becomes necessary for an increase in PROJECT support funding, said increase will be paid in full by CVAG, using local funding sources.
3. CVAG's initial total obligation for the costs of SERVICES is estimated to be \$36,000. Said initial billing represents CVAG's share for two (2) months estimated cost of construction support. This amount is subject to being increased to cover the costs of:
 - a.) additional utility protection, relocation, or removal as provided in Article 14 of Section IV of this Agreement,

- b.) for remedy and/or remedial action of hazardous substance or contaminated sites,
 - c.) the protection of cultural, archaeological, paleontological, or other protected materials as is provided for in Articles 22 and 23 of Section IV of this Agreement.
4. To deposit with STATE within twenty (20) working days of receipt of billing from STATE (which billing will be forwarded thirty (30) days prior to STATE's bid advertising date for a contract to construct PROJECT), the amount of \$216,000, said amount represents one (1) month of the estimated construction cost for PROJECT and for two (2) months of PROJECT construction SERVICES cost, being paid from CVAG's TUMF and/or Measure A funding sources, as specified in Article 5 of Section I of this Agreement. Thereafter, to deposit with STATE not later than ten (10) working days preceding the beginning of each month, one (1) month of the estimated expenditures for a portion of SERVICES and construction cost being paid from CVAG's TUMF and/or Measure A funding sources, and to continue making such advance deposits of these combined estimated expenditures on a monthly basis until PROJECT completion.
 5. To deposit with STATE within twenty-five (25) days of receipt of STATE's billing thereof the amount of said bill, which amount represents the estimated cost of "State-furnished material" and source inspection, as referred to in Article 7 of Section I.
 6. To pay STATE upon completion of all work on PROJECT and within twenty-five (25) days of receipt of a detailed statement made upon final accounting of costs therefor, any amount, over and above the aforesaid deposits for State-furnished materials and source inspection, required to complete CVAG's financial obligations assumed pursuant to this Agreement.
 7. To make supplemental payments when required within twenty (20) calendar days after receipt of invoice.
 8. To pay STATE any amount over the aforementioned payments required to complete CVAG's financial obligation for construction Capital and Support costs pursuant to this Agreement after completion of all work and within twenty-five (25) working days after receipt of a detailed statement made upon final accounting of costs.
 9. Upon execution of this Agreement, to certify that funds are budgeted for CVAG's portion of the total PROJECT cost as estimated in Exhibit A.
 10. STATE's construction contract claims process will be used for all PROJECT-related claims by the construction contractor (with STATE acting as the lead agency in consultation with CVAG) for additional compensation for the contractor's services. CVAG shall abide by the outcome of said process. In the event that arbitration under the provisions of Public Contract Code section 10240 et seq. results from that contract

claims process, STATE will act as lead agency in said arbitration unless otherwise mutually agreed to by STATE and CVAG.

SECTION III

COUNTY AGREES:

1. During construction of PROJECT, STATE's construction contractor will assume maintenance of any part of PROJECT within PROJECT limits. Upon completion of PROJECT, COUNTY will assume maintenance and expense thereof for any part of PROJECT located outside STATE's right of way and STATE will assume maintenance and expense thereof for any part of PROJECT located within STATE right of way required for the operation of SHS.
2. COUNTY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. COUNTY will undertake HM-1 management activities with minimum impact to PROJECT schedule.

SECTION IV

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. Should any portion of PROJECT be financed with Federal funds or State gas tax funds, all applicable laws, rules, and policies relating to the use of such funds shall apply notwithstanding any other provision of this Agreement to the contrary.
3. Any change to parties' PROJECT costs and responsibilities shall be covered by an amendment to this Agreement. STATE may be required to stop work on PROJECT until additional funding is secured and/or to restore the site of PROJECT to a condition of safe operation, using any then unexpended funds for PROJECT, if additional funds are not made available for PROJECT.
4. STATE shall not advertise for bids for a contract to construct PROJECT until after this Agreement is fully executed and until after STATE is in control and/or possession of any required new rights of way, free and clear of all encumbrances detrimental to STATE's present and future uses. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by CVAG.

5. STATE shall not award a contract to construct PROJECT until after receipt of CVAG's deposit of their share of funds for PROJECT required in Article 4 of Section II of this Agreement.
6. Prior to advertising for bids for the construction contract for PROJECT, CVAG may terminate this Agreement in writing, provided that CVAG pays STATE for all already incurred and all unavoidable PROJECT costs related to termination of PROJECT incurred by STATE under the terms of this Agreement.
7. If, upon opening of bids for the construction contract for PROJECT, the lowest responsible bid is not more than ten percent (10%) over the Engineer's Estimate, STATE and CVAG may conduct a joint review of the bids immediately following opening of bids and prior to submittal of STATE's District 8 letter of recommendation to award to STATE's Office Engineer in Sacramento, if so requested by CVAG. After the joint review, and within the time allowed for award, STATE may then award the construction contract for PROJECT.
8. If upon review of the aforementioned bids, CVAG, by written notice to STATE's District 8 Office, elects to not proceed with PROJECT, thereby causing STATE to reject all bids, CVAG agrees to pay STATE for all of STATE's already incurred and all unavoidable costs related to termination of PROJECT incurred by STATE, including all legal costs and damages resulting from rejection of all PROJECT bids.
9. If, upon opening of bids for the contract to construct PROJECT, it is found that the lowest responsible bid exceeds the Engineer's Estimate by more than ten percent (10%), STATE and CVAG shall consult upon a course of action. If, after fifteen (15) days, a course of action is not agreed upon, this Agreement shall be deemed to be terminated by mutual consent pursuant to Article 10 of this Section IV.
10. If termination of this Agreement is by mutual consent of all parties, CVAG will bear one hundred percent (100%) of all PROJECT-related costs incurred by STATE pursuant to this Agreement.
11. If this Agreement is terminated by CVAG or COUNTY, CVAG will bear one hundred percent (100%) of all PROJECT-related costs incurred by STATE pursuant to this Agreement.
12. After award of the construction contract for PROJECT, should CVAG, after a request by STATE, not fulfill its funding commitments agreed to under this Agreement, STATE shall ensure that all operating roadways are in a safe and satisfactory permanent operating condition and then shall cease work on PROJECT. Costs incurred by STATE pursuant to this Agreement in excess of payment made by CVAG will be billed to CVAG and are subject to payment by CVAG within thirty (30) days or STATE, acting through the State Controller, may withhold an equal amount from

future apportionments due CVAG from the Highway User Tax Fund or other fund source.

13. During the construction of PROJECT, COUNTY may, at no cost to STATE, furnish representatives, if it so desires. STATE's Resident Engineer and COUNTY's representatives shall cooperate and consult with each other, but the decision of STATE's Resident Engineer shall be final and COUNTY's assigned representatives shall have no direct contact with STATE's contractor, the public, other local agencies, etc., without prior consent of STATE's Resident Engineer. While said representatives and STATE's Engineer will cooperate and consult with each other, the decisions of STATE's Resident Engineer shall prevail as final, binding and conclusive in all matters concerning the PROJECT construction contract.
14. If unknown existing public and/or private utility facilities are discovered during PROJECT construction, or if there is a significant change required in any approved utility relocation plan, the provisions of STATE's current Standard Specifications Section 8-1.10 (Utilities and Non-Highways Facilities) shall apply. STATE will make all necessary arrangements with the owners of such facilities for the protection, relocation, or removal of the discovered utility facilities in accordance with STATE's policy and procedure for those facilities located within the limits of work providing for the improvement to the State Highway and in accordance with COUNTY's policy for those facilities located outside of the limits of work for the improvement to the State Highway. The cost of the protection, relocation, or removal shall be apportioned between the owner of the utility facility and CVAG in accordance with STATE's policy and procedure. STATE shall require any utility owner performing relocation work in the State Highway right of way to obtain an encroachment permit from STATE prior to the performance of said relocation work. The requirements of the most current version of STATE's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way" shall be fully complied with. Any relocated or new facilities shall be correctly shown and identified on the "As-Built" plans for PROJECT.
15. STATE agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements and/or approvals from appropriate regulatory agencies, unless the parties otherwise mutually agree in writing. If the parties agree in writing that CVAG/COUNTY is responsible for obtaining said PROJECT permits, agreements, and /or approvals from appropriate regulatory agencies, then those said costs shall be a PROJECT cost.
16. STATE shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
17. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permit(s), agreement(s),

and/ or approval(s) for PROJECT related to the environmental documentation, all legal costs associated with those said legal challenges shall be a PROJECT cost.

18. If, during performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with the California Environmental Quality Act (CEQA) and if applicable, the National Environmental Policy Act (NEPA), this Agreement will be amended to include completion of those additional tasks.
19. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
20. During PROJECT construction, representatives of COUNTY and STATE will cooperate and consult with each other to assure that all PROJECT work is accomplished according to the PROJECT PS&E and STATE's then applicable policies, procedures, standards, and practices.
21. In the event that STATE proposes and/or requires a change in design standards, implementation of those new or revised design standards shall be done in accordance with STATE's Highway Design Manual, Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with CVAG and COUNTY in a timely manner regarding the expense of proposed and/or required PROJECT changes.
22. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during construction of PROJECT, STATE shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.
23. The party that discovers hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

24. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

COUNTY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. COUNTY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

25. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a PROJECT construction cost.

26. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
27. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
28. Upon PROJECT completion and acceptance, subject to the approval of STATE, STATE will commence its operational responsibilities over the new State Highway facilities while the respective maintenance responsibilities of the parties will be defined by existing Maintenance Agreement # 11-8080, entered into effective on May 3, 1974, which agreement adequately identifies current and future obligations of the parties.
29. Upon satisfactory completion of all PROJECT work under this Agreement, as determined by STATE, actual ownership and title to materials, equipment, and appurtenances installed within the operating SHS right of way for SHS operations will automatically be vested in STATE, and materials, equipment, and appurtenances installed for non-SHS operations both inside (such as overcrossing and underpasses for local traffic) and outside of the SHS right of way will automatically be deemed to be under the control of COUNTY or an appropriate third party as determined by COUNTY. No further agreement will be necessary to transfer ownership as hereinbefore stated.
30. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, and maintenance of SHS and public facilities different from the standard of care imposed by law.

31. Neither STATE or COUNTY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CVAG under or in connection with any work, authority, or jurisdiction conferred upon CVAG or arising under this Agreement. It is understood and agreed that, CVAG will fully defend, indemnify, and save harmless STATE and COUNTY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CVAG under this Agreement.
32. Neither CVAG or COUNTY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless CVAG and COUNTY and all its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
33. Neither STATE or CVAG nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority, or jurisdiction conferred upon COUNTY or arising under this Agreement. It is understood and agreed that, COUNTY will fully defend, indemnify, and save harmless STATE and CVAG and all its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by or COUNTY under this Agreement.
34. Prior to the commencement of any construction activity within the SHS right of way, either STATE or CVAG or COUNTY may terminate this Agreement by written notice to the other party.
35. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
36. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon completion and acceptance of the PROJECT by STATE and the satisfactory completion of all post-construction obligations of STATE with concurrence of CVAG and COUNTY, or on June 30, 2014, whichever is earlier in time. However, the ownership, operation, maintenance, environmental commitment, legal challenge, indemnification, and claims clauses shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-

related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the termination date of this Agreement.

SIGNATURES ON FOLLOWING PAGE:

I-10/BOB HOPE DRIVE EXTENSION

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

WILL KEMPTON
Director

By: _____
RAYMOND W. WOLFE, PhD
District Director (Acting)

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Attorney,
Department of Transportation

CERTIFIED AS TO FUNDS:

By: _____
District Budget Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

for By: Victoria Mady
Accounting Administrator

COACHELLA VALLEY
ASSOCIATION OF GOVERNMENTS

By: _____
Chairman, Executive Committee

By: _____
Executive Director

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
CVAG Counsel

COUNTY OF RIVERSIDE

By: _____
JEFF STONE
Supervisor, Board of Supervisors

By: _____
KECIA HARPER-IHEM
Clerk, Board of Supervisors

APPROVED AS TO FORM AND
PROCEDURE:

By: Marsha L. Victor
M. Victor, Deputy for
PAMELA J. WALLS
COUNTY Counsel

EXHIBIT A
COST ESTIMATE

PHASE OF WORK	CVAG	TYPE OF FUNDS
Construction Support (SERVICES)	\$5,429,000	STIP/RIP
Construction Capital	\$34,912,000	STIP/RIP
Construction Capital	\$11,685,000	Local Funds
TOTAL	\$52,026,000	