

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

278



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
September 15, 2010

SUBJECT: Approval of the Forbearance Agreement by and between CVAG, County of Riverside and City of Desert Hot Springs

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Forbearance Agreement by and between CVAG, County of Riverside and City of Desert Hot Springs, and;
2. Authorize the Chairman of the Board to execute the same, and;
3. Approve the use of DIF Western Coachella Roads, Bridges and Major Improvement Funds (30508) for the Palm Drive/I-10 Interchange improvement project to reimburse the General Fund.

Juan C. Perez
Director of Transportation

(Continued On Attached Page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 800,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11
SOURCE OF FUNDS: DIF Western Coachella Roads, Bridges and Major Improvement Funds (100%)				Positions To Be Deleted Per A-30 <input type="checkbox"/>
				Requires 4/5 Vote <input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:

Tina Grande

County Executive Office Signature

FORM 11 COUNTY COUNSEL
 BY: Dawn Watts-Bazan 9/20/10
 KAKIN L. WATTS-BAZAN DATE Departmental Concurrence

Dept's Recomm.: Consent Policy
 Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. 07/20/07 (3.1)

District: 5

Agenda Number:

3.80

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

The Honorable Board of Supervisors

RE: Approval of the Forbearance Agreement by and between CVAG, County of Riverside and City of Desert Hot Springs

September 15, 2010

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BACKGROUND: In July 2007, the County entered into a reimbursement agreement with the Coachella Valley Association of Governments (CVAG) by which CVAG agreed to reimburse the County for \$800,000 of funds that the County spent in preparation of the Coachella Valley Multiple Species Conservation Plan (CVMSHCP). This funding contribution was necessary in order to assist CVAG in revising and recirculating the draft CVMSHP to exclude the City of Desert Hot Springs. The City of Desert Hot Springs was the only city with the Coachella Valley that did not adopt the CVMSHCP when it was originally considered in 2006. CVAG is currently processing a major amendment to the existing approved CVMSHCP to include the City of Desert Hot Springs as a Permittee, pursuant to their request.

The CVMSHCP was critically important to the environmental approvals of multiple interchange improvements along I-10, some of which are now under construction (Indian, Palm Drive, Ramon Rd/Bob Hope).

Through the lobbying efforts of the City of Desert Hot Springs, additional Federal funds have been applied to the Palm Drive/I-10 interchange improvement project. This then allows the County to shift road funds that would otherwise have been spent on our local share of that interchange, a DIF eligible facility, to reimburse the County's General Fund for the outstanding CVAG reimbursement obligation. The County's DIF fund total financial contribution remains the same as it would be if the funds were used directly for the local share of the interchange project. Immediate benefits are then realized to our General Fund, and this transfer allows CVAG to utilize the funds that would have been otherwise used for loan repayment toward habitat acquisition, assisting with implementation of the plan at a time of lower land acquisition costs.

This agreement has been approved by the CVAG Executive Committee.

COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

Contract No. 10-09-010
Riverside Co. Transportation

FORBEARANCE AGREEMENT BY AND BETWEEN CVAG, COUNTY OF RIVERSIDE, AND CITY OF DESERT HOT SPRINGS

THIS AGREEMENT is made and entered into this ___ day of _____, 20___, by and between the County of Riverside ("County"), the City of Desert Hot Springs ("City"), and the Coachella Valley Association of Governments ("CVAG"), a California joint powers authority, and is made with reference to the following background facts and circumstances:

The City was the only city within the Coachella Valley that did not adopt the Coachealla Valley Multiple Species Habitat Plan (MSHCP) when it was circulated for approval in 2006;

As a result of the City's failure to approve the MSHCP, CVAG and County incurred significant expense to revise and recirculate the MSHCP, and environmental documents, in order to delete the City's territory from the plan area;

A portion of the cost incurred by CVAG to revise the MSHCP was funded by an advance totalling \$800,000 from the County pursuant to a loan agreement, dated July 31, 2007;

After permits for the revised MSHCP were issued in October 2008, and not withstanding its prior refusal to participate, the City requested a major amendment to the MSHCP whereby the City might now become a Permittee under the MSHCP;

The City acknowledges the extreme expense incurred as a result of the City's shift in position concerning its participation in the MSHCP;

The City has recently secured federal funding for a regional transportation project whereby more than \$1 million dollars in regional Measure A and TUMF funds can now be applied to other previously unfunded regional transportation project costs;

As a result of the City's success in securing said federal funding, the County and CVAG have benefited in that local and regional funds originally committed to one project have now been freed to be used for other projects.

NOW, THEREFORE, in consideration of the City's assistance in securing the federal funds for a regional transportation project, the parties agree as follows:

1. Provided the federal funding secured by the City is received by County for the applicable regional transportation project, the City shall not be required, as a condition to the issuance of a permit under the MSHCP, to repay to CVAG any portion of the increased costs related to the revision of or amendment to the MSHCP;

2. In consideration of the savings to the County with respect to its local share of the project to which the federal funds secured by the City shall be applied, and in further acknowledgement of the forbearance by CVAG to seek reimbursement from

COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

the City of the costs that were funded by sums advanced by the County, the County shall waive all right to reimbursement otherwise permitted under the Amended and Restated Reimbursement Agreement by and between CVAG and County dated July 31, 2007.

3. This Agreement shall be effective only upon the City's adoption of the MSHCP and execution of the Implementing Agreement for same, and upon receipt by the County of all federal funds secured by the City and the execution of the corresponding agreement for the application of said federal funds for the regional transportation project for which said federal funds have been earmarked.

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

5. 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 any Party will excuse any Party from full and timely performance in accordance with the terms of this Agreement.

6. This Agreement may not be assigned without the express written consent of CVAG and the County first being obtained.

7. The Parties, and their successors in interest and assigns shall be bound by all the provisions contained in this Agreement.

8. 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.

9. 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**: Bill Luna, County Executive Officer
Executive Office
County Administrative Center
4080 Lemon Street, 4th Floor
Riverside, CA 92502-3679
Telephone: (951)955-1100
FAX No.: (951)955-1105

COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

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

If to CITY: Rick Daniels, City Manager
City of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240
Telephone: (760) 329-6411
FAX No.: (760) 288-3129

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.

10. 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.

11. 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.

12. 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.

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

14. 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.

COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

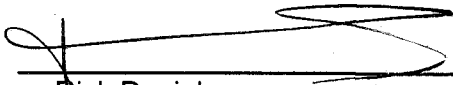
15. Each party warrants that the execution, delivery and performance of this Agreement and any and all related documents are duly authorized and do not require the further consent or approval of any body, board or commission or other authority.

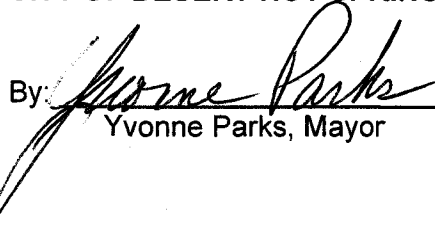
16. This Agreement may be executed in one or more counterparts and when a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.

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

ATTEST:

CITY OF DESERT HOT SPRINGS

By: 
Rick Daniels
City Manager

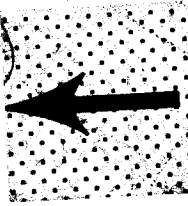
By: 
Yvonne Parks, Mayor

ATTEST:
CLERK TO THE BOARD

COUNTY OF RIVERSIDE

By: _____
(Deputy)

By: _____
Chairman, Board of Supervisors

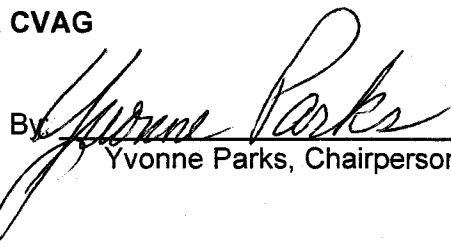


(SEAL)

ATTEST:

CVAG

By: _____
Tom Kirk
Executive Director

By: 
Yvonne Parks, Chairperson

FORM APPROVED COUNTY COUNSEL
By:  9/20/10
KARIN L. WATTS-BAZAN DATE