

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

529A



FROM: TLMA - Transportation Department

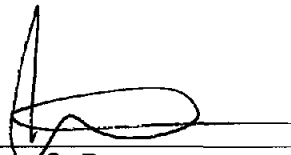
SUBMITTAL DATE:
April 28, 2011

SUBJECT: Funding Agreement between the County of Riverside and the Agua Caliente Band of Cahuilla Indians for maintenance of architectural enhancements to the Bob Hope Drive Interchange.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Funding Agreement between the County of Riverside (County) and the Agua Caliente Band of Cahuilla Indian (Tribe) for maintenance of architectural enhancements to the Bob Hope Drive Interchange, and;
2. Authorize the Chairman of the Board to execute the same.

Departmental Concurrence



Juan C. Perez
Director of Transportation


(Continued On Attached Page)

FORM APPROVED COUNTY COUNSEL
DATE 4/27/11
BY: MARSHA L. VICTOR

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 2,000	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: Agua Caliente Band of Cahuilla Indians (100%) Project No. A4-0747			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

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. 5/19/09, Item 3.36 | **District:** 4 | **Agenda Number:**

The Honorable Board of Supervisors

RE: Funding Agreement between the County of Riverside and the Agua Caliente Band of Cahuilla Indians for maintenance of architectural enhancements to the new Bob Hope Drive Interchange

April 28, 2011

Page 2 of 2

BACKGROUND: The Interstate 10 at Ramon Road Interchange is a gateway into the cities of Rancho Mirage and Cathedral City and the unincorporated County. Significant growth in the area has increased traffic beyond the capacity of the existing interchange. A new interchange is under construction to add capacity and improve operations of the interchange. The new interchange will be located just to the west of the Ramon Road interchange and will connect directly to Bob Hope Drive. The existing westbound on and off ramps and the eastbound off ramp will be removed from the Ramon Road interchange. The access provided by these existing ramps will be replaced with access provided by the new Bob Hope Drive interchange. The existing bridge overcrossing and eastbound on ramp at Ramon Road will remain.

The California Department of Transportation (Caltrans) is the lead agency responsible for implementation of the Bob Hope Drive Interchange improvements. At the request of Tribe, Caltrans incorporated certain architectural enhancements into the interchange design including treatments to the slope pavement, columns, and chain link railing.

On May 19, 2009, the Board approved a maintenance agreement between the County and Caltrans for the Bob Hope Interchange. The terms of this agreement assign the County with responsibility for maintenance of certain specific elements of the project improvements including the architectural enhancements installed at the request of the Tribe.

This agreement provides funding from the Tribe to cover the costs associated with the County's maintenance of the architectural treatments that have been incorporated into the interchange improvements at the request of the Tribe.

FUNDING AGREEMENT

FOR THE MAINTENANCE OF THE PROPOSED ARCHITECTURAL TREATMENTS

TO THE FUTURE BOB HOPE DRIVE/I-10 INTERCHANGE

This FUNDING AGREEMENT ("Agreement"), dated _____, 2011 is between the County of Riverside, a political subdivision of the State of California ("County") and Agua Caliente Band of Cahuilla Indians ("Tribe"), a federally recognized Indian Tribe whose Indian Lands are located within the boundaries of the County.

WITNESSETH:

WHEREAS, the Agua Caliente Band of Cahuilla Indians is a Federally-recognized Indian Tribe governing itself according to a Constitution and By-Laws and exercising sovereign authority over the lands of the Agua Caliente Indian Reservation ("Reservation"), acting through its duly elected Tribal Council; and

WHEREAS, the County is a subdivision of the State of California, possessing full powers with respect to legislative affairs to regulate the territory under its jurisdiction and in accordance with the California Constitution and State law, and acting through its duly elected Board of Supervisors ("Board"); and

WHEREAS, The Tribe hired an artist to upgrade the aesthetic design of the future Bob Hope Drive/I-10 Interchange ("Interchange") by incorporating architectural treatments to the slope pavement, columns, and chain link railing provided for pedestrian screening above the Interchange bridge deck; and

WHEREAS, the Tribe coordinated with the California Department of Transportation ("Caltrans") to incorporate architectural treatments to the slope pavement, columns, and chain link railing provided for pedestrian screening above the bridge deck for the Interchange; and

WHEREAS, Caltrans approved the incorporation of the proposed architectural treatments commissioned by the Tribe, subject to a separate maintenance agreement; and

WHEREAS, the County has entered into an agreement with Caltrans to take responsibility for the maintenance of the architectural treatments; and

WHEREAS, the Board of Supervisors ("Board") of the County, has resolved to enter into this Agreement with the Tribe to establish a procedure for the County to seek reimbursement for expenses associated with the maintenance of the architectural treatments.

NOW THEREFORE, IT IS AGREED:

In consideration of the above recitals and the covenants hereinafter contained, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1 **Section 1. Reimbursement Agreement for Routine Maintenance Expenses.**

2 The Tribe shall, within 30 days of receipt of an invoice, reimburse the County for expenses incurred during routine
3 maintenance of the aesthetic treatments to the slope pavement, columns, and chain link railing. Routine
4 maintenance shall include, but not be limited to, graffiti removal, re-staining of faded areas, and other minor
5 repairs. The standard amount of reimbursement under routine maintenance shall be limited to \$2,000 per
6 calendar year. Any routine maintenance work that exceeds this amount shall be pre-approved by the Tribe.

7 **Section 2. Non-Routine Maintenance and Damage Repair or Routine Maintenance in excess of the**
8 **maximum yearly authorization.**

9 For all non-routine related maintenance and damage repair (i.e. damage from a vehicle crash, severe weather, or
10 natural disaster) to the aesthetic treatments of the slope pavement, columns, and chain link railing, the County
11 shall prepare a scope and cost estimate for the needed maintenance or repair work and submit them to the Tribe
12 for review and approval. The Tribe shall review the scope and cost estimate submitted by the County to
13 determine if the cost estimate is reasonable and, if so, agree to reimburse the County for the maintenance or
14 repair work. In the event that actual bid amounts received exceed the cost of the estimate, County shall submit
15 the bids received to the Tribe for review and approval. The Tribe shall review the bids to determine if the costs are
16 reasonable and, if so, agree to reimburse the County for the maintenance or repair work. If the Tribe does not
17 agree with the cost estimate, *scope of the maintenance or repair work* or the actual bids, the Tribe shall negotiate
18 in good faith with the County to resolve the disagreement. However, nothing in this agreement shall limit the
19 County's ability to perform immediate repair work to the railings or other safety elements using the most
20 expeditious means available to protect the public health and safety. In the event of a vehicle crash or other man-
21 caused incident, the County shall make reasonable efforts to seek restitution from the at-fault party prior to
22 seeking reimbursement from the Tribe.

23 **Section 3. Term.**

24 Once ratified, this Agreement shall remain in full force and effect until Caltrans assumes maintenance
25 responsibilities for the architectural treatments.

26 **Section 4. Amendment.**

27 At any time, if either party to this Agreement believes that changed circumstances require an amendment to the
28 terms of this Agreement, on request by the party claiming the changed circumstances, authorized representatives
29 of the parties will meet and confer to review the claimed changed circumstances on a government-to-government

1 basis to determine if this Agreement should be so amended. If so, any amendment will be in writing, following the
2 form of this Agreement, and signed by authorized representatives to this Agreement.

3 **Section 5. Assignment.**

4 This Agreement may not be assigned by the Tribe or the County without the formal written consent of both
5 parties, which consent shall be in the form of a written amendment to this Agreement and shall not be
6 unreasonably withheld, delayed or conditioned.

7 **Section 6. Independent Parties**

8 Notwithstanding the provision of the reimbursement agreement for routine maintenance and the non-routine
9 maintenance and damage repair procedures for the architectural treatments, it is the express intent of the parties
10 that each is an independent party, and nothing in this Agreement shall be interpreted or construed as creating or
11 establishing a joint powers authority, joint venture, or any other relationship between the parties other than as
12 separate legal entities.

13 **Section 7. Notices.**

14 Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other
15 communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or
16 at such other address as such party may provide to the other party in writing from time to time, namely:

17 Director of Transportation

18 County of Riverside

19 4080 Lemon Street

20 Riverside, CA 92502-1629

21 Fax: (951) 955-3198 Phone: (951) 955-6740

23 Chief Planning and Development Officer

24 Agua Caliente Band of Cahuilla Indians

25 5401 Dinah Shore Drive

26 Palm Springs, CA 92264

27 Fax: (760) 699-6959 Phone: (760) 699-6800

28 Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other
29 communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served

Bob Hope Drive/I-10 Interchange Maintenance Funding Agreement

1 or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram, or telecopy, upon
2 the sender's receipt of an appropriate answer back or other written acknowledgment, (c) if given by registered or
3 certified mail, return receipt requested, deposited in the United States mail postage prepaid, 72 hours after such
4 notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24
5 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address
6 specified in this Section.

7 **Section 8. Warranties and Representations.**

8 Each of the individuals signing this Agreement warrants and represents (i) the full power to enter into this
9 Agreement on behalf of itself; (ii) that the Tribe is entitled to conduct business as described herein, (iii) that all
10 actions and approvals have been taken which are necessary to make this Agreement a binding and enforceable
11 obligation of each party; (iv) that the individual signing this Agreement is authorized to execute this Agreement,
12 and (v) that the delivery, and performance of this Agreement is not in conflict with and will not cause an event of
13 default under any agreement or instrument to which each is bound. An opinion from counsel representing the
14 Tribe specifically addressing the provisions of enforceability will be delivered with the executed copy of this
15 Agreement.

16 **Section 9. Consent to Jurisdiction: Limited Waiver of Sovereign Immunity and Exhaustion of Tribal**
17 **Remedies.**

18 By entering into or performing under this Agreement, the Tribe does not waive, limit, or alter its sovereign
19 immunity from unconsented suit or other proceedings except as expressly stated herein. The Tribe does hereby
20 expressly and irrevocably waives its sovereign immunity from unconsented suit by the County, and only the
21 County, solely for the enforcement by the County of the express obligations undertaken by the Tribe toward the
22 County in this Agreement. For only this purpose, the Tribe hereby consents to such suits brought by the County
23 in the State courts of the State of California (including any courts to which appeals therefrom are available).
24 Subject to the same limitations, the Tribe also hereby waives any application of the doctrine of exhaustion of tribal
25 court remedies or any similar rule of comity with respect to tribal courts. These waivers do not extend, however,
26 to any action by persons or entities not parties to this Agreement. Further, this waiver applies to permit the
27 County to enforce any final judgment or court order against the Tribe in favor of the County pertaining to the
28 enforcement of this Agreement, as described above.

Section 10. General.

This Agreement contains the entire agreement between the parties with respect to the matters herein provided for, and may only be amended by a subsequent written agreement signed on behalf of all the parties. This Agreement is entered into for the sole benefit of the parties hereto and there are no third party beneficiaries to this Agreement. Unless inconsistent with Federal law, which shall be supreme, the laws of the State of California shall govern the interpretation and enforcement of this Agreement.

The parties to this Agreement and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement. If a provision of this Agreement is found to be void, illegal or unenforceable, then any such provision shall be stricken and the remaining provisions hereof shall, nevertheless, remain in full force and effect. Should any party to this Agreement commence a court action or proceeding against any other party with respect to this Agreement, the party or parties prevailing in such action or proceeding shall be entitled to receive from the losing party or parties its/their reasonable attorneys' fees, expert witness' fees, court costs and other costs incurred by it/their in prosecuting or defending such action or proceeding. The captions of the sections of this Agreement are provided for convenience only and shall not have any bearing on the interpretation of any section hereof. This Agreement constitutes the complete and entire written agreement between the parties hereto and constitutes the complete expression of the terms of the Agreement. All prior and contemporaneous agreements, representations, and negotiations are superseded and merged herein. This Agreement may be executed in several counterparts, each of which shall be an original copy of the same agreement and which together shall constitute a single agreement.

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Bob Hope Drive/I-10 Interchange Maintenance Funding Agreement

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APPROVALS

COUNTY

APPROVED AS TO FORM:

Pamela J. Walls Dated: 4/27/11

PAMELA J. WALLS

County Counsel

APPROVAL BY THE BOARD OF SUPERVISORS

_____ Dated: _____

PRINTED NAME

Chairman, Riverside County Board of Supervisors

ATTEST:

_____ Dated: _____

KECIA HARPER-IHEM

Clerk of the Board (SEAL)

AGUA CALIENTE BAND OF CAHUILLA INDIANS

APPROVED AS TO FORM:

Michelle A. Carr Dated: 3/23/11

MICHELLE A. CARR

Tribal Counsel

APPROVED:

Richard M. Milanovich Dated: 3-23-11

RICHARD M. MILANOVICH

Chairman, Tribal Council