

CC/RDA ACTION _____ MTG. DATE: 8-16-2007
APPROVED DENIED _____ REC/FILE _____ CONT. _____
OTHER _____
VOTE: YES 5 NO 0 ABSTAIN _____

STAFF REPORT

DATE: August 16, 2007
TO: Honorable Mayor and City Council
FROM: Timothy T. Wassil, P.E.
Public Works Director/City Engineer
SUBJECT: Approve Amendment to Reimbursement Agreement
for Highway 111 Sound Wall

Summary

This report recommends approving the attached Amendment Number One to the Future Reimbursement Agreement executed between the Coachella Valley Association of Governments (CVAG) and the City of Indian Wells. The originally executed Agreement discussed the terms of reimbursement to the City for construction of the sound wall constructed on the north side Highway 111 between City Hall and Indian Wells Lane. The original Agreement did not provide a date for reimbursement, and this amendment will secure reimbursement for FY 2009/10.

Background

On September 21, 2006, Council approved a Future Reimbursement Agreement for Highway 111 Improvements in the City of Indian Wells. This Agreement was specific to the sound wall constructed on the north side of the Highway between City Hall and Indian Wells Lane. The Agreement identified a total project cost of \$1,460,673, with a CVAG share of \$730,336.50, or 50% of the costs. At the time the Agreement was prepared, CVAG had no funding available for immediate reimbursement, and the agreement stated that the project would "receive future funding contingent upon the availability of funds".

Analysis

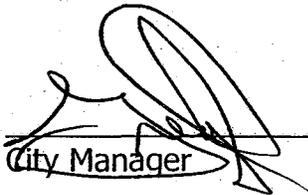
CVAG has now determined that reimbursement funds for this project will be available in FY2009/10. Approval of the attached amendment between CVAG and Indian Wells will enable us to submit a request for reimbursement in the amount of \$730,336.50 after July 1, 2009.

Fiscal Impact

1. Financial Benefit: Approval of this Amendment will insure that the City receives reimbursement in the amount of \$730,336.50. Immediately after July 1, 2009 the City will submit to CVAG a request for reimbursement.
2. Cost and Budget: RDA funds in the amount of \$1,460,673 were expended in constructing these budgeted improvements.
3. Supplemental Appropriation: No supplemental appropriation is required.

Recommendation

Approve Amendment Number One to the Future Reimbursement Agreement for Highway 111 Improvements between the Coachella Valley Association of Governments and the City of Indian Wells.



City Manager

Attachment: Amendment Number One
Future Reimbursement Agreement

CVAG - CITY OF INDIAN WELLS & INDIAN WELLS REDEVELOPMENT AGENCY

FUTURE (FISCAL YEAR 2009/2010) REIMBURSEMENT AGREEMENT

AMENDMENT NUMBER ONE

"HIGHWAY 111 IMPROVEMENTS IN THE CITY OF INDIAN WELLS"

This Amendment Number One is made and entered into this _____ day of _____, 2007, by and between the City of Indian Wells and the Indian Wells Redevelopment Agency, (Collectively "Agency"), and the Coachella Valley Association of Governments, a California joint powers agency, ("CVAG"), and is made with reference to the following background facts and circumstances:

This amendment number one establishes the future reimbursement date for this project to be FY 09/10, per CVAG Future Reimbursement Agreement Policy number 07-05, approved by the CVAG Executive Committee on April 30, 2007. All other provisions in the existing Reimbursement Agreement for the "Highway 111 Improvements in the City of Indian Wells" ("the Project"), executed November 9, 2006 are considered in force.

Non-substantive changes may be made to this reimbursement agreement subject to CVAG's General Counsel's approval.

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

ATTEST:

CITY OF INDIAN WELLS

By: _____
City Clerk

By: _____
Mayor

APPROVED AS TO FORM

INDIAN WELLS REDEVELOPMENT AGENCY

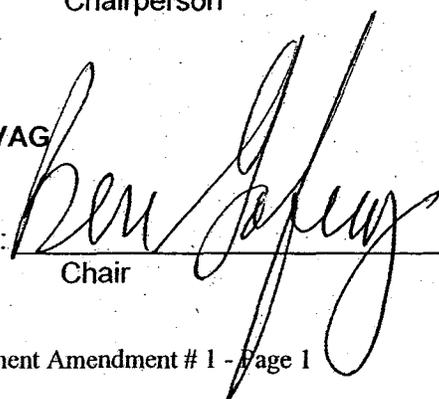
By: _____
City Attorney/Agency Counsel

By: _____
Chairperson

ATTEST:

CVAG

By: _____
John Wohlmuth,
Executive Director

By: 
Chair

CITY OF INDIAN WELLS- CVAG
FUTURE REIMBURSEMENT AGREEMENT

" HIGHWAY 111 IMPROVEMENTS IN THE CITY OF INDIAN WELLS"

THIS AGREEMENT is made and entered into this 9TH day of NOVEMBER, 2006, by and between the City of Indian Wells ("Agency"), and the Coachella Valley Association of Governments, a California joint powers agency, ("CVAG"), and is made with reference to the following background facts and circumstances:

RECITALS

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 to be projects of regional importance; and

Approval of a highway financing measure by the voters of Riverside County in November of 1988 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

Under CVAG's customary method of funding eligible projects with member jurisdictions, a jurisdiction pays one-half of the eligible costs (the "Jurisdiction One-Half") and CVAG pays the other one-half (the "CVAG One-Half"). Historically, the CVAG One-Half has been paid after project completion as a reimbursement to the jurisdiction (the "Reimbursement Policy.") However, there now exists a compelling need to fund and construct various eligible projects notwithstanding that some or all of CVAG's member jurisdictions do not now have their funding in place so that such projects could go forward under the Reimbursement policy.

Agency indicated that the preliminary results for the environmental study for widening Highway 111 in Indian Wells revealed that sound walls along Highway 111 are required to mitigate for the noise for a project known as "Highway 111 Improvements in the City of Indian Wells" (the "Project"). The total project cost is \$1,460,673 of which CVAG's share is \$730,336.50.

Agency agrees to submit only those costs which are eligible under CVAG's policies as outlined in Section IV, "Cost Determination/Expense Eligibility" of CVAG's Policies and Procedures Manual.

Any excess property purchased to secure the necessary Right-of-Way will be deemed to belong to the Regional Arterial Program. Excess property will be disposed of in the best interests of the Regional Arterial Program, in order to recapture funds expended.

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 future 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 (TPPS) list of projects. The Project is one of those projects and is therefore eligible. **This project will receive future funding contingent upon the availability of funds.**

2. The Project is generally described as and consists of the following: **"Highway 111 Improvements in the City of Indian Wells"**. These services will hereinafter be referred to as the "Project".

3. The scope of work of the Project is more particularly described in **Exhibit "A"**, entitled **"Scope of Services - "Highway 111 Improvements in the City of Indian Wells"** attached hereto and made a part hereof. The cost for the Project is more particularly described in **Exhibit "B" - "Estimate of Cost"**, attached hereto and made a part hereof. The cost estimates include 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 amount Agency shall pay to outside contractors in connection with the Project. The amount of the Jurisdiction One-Half and the CVAG One-Half shall be calculated by reference to the cost estimates as shown on **Exhibit "B"**. **Exhibit "C" is the "Project Schedule"**.

4. It is the agreement between CVAG and Agency that of the total cost of the Project of \$1,460,673, Agency shall pay its Jurisdiction One-Half and CVAG shall pay its CVAG One-Half. Jurisdiction One-Half includes all funding sources, except CVAG funding.

4.1 Payments to Agency shall be made upon presentation to CVAG of statements from Agency, certifying by Project its costs, and enclosing therewith copies of contractor's invoices, evidence of payment, and such other information and records as may be required by CVAG to verify costs.

4.2 Eligible costs are defined as those outlined in Section IV, "Cost Determination/Expense Eligibility" of CVAG's Policies and Procedures Manual (Attachment 1).

5. 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, and final payment will thereafter be paid by CVAG in accordance with its rules and regulations and policies concerning Project Cost Determination and Expense Eligibility.

6. The parties agree that should unforeseen circumstances arise which result in new work not covered in **Exhibit "A"** or an increase of any costs over those shown in **Exhibit "B"**, CVAG will in good faith consider an amendment to this agreement to include any such costs under this agreement so as to provide thereby for further reimbursement to be made on account thereof. The Scope of Work shall be subject to changes, for the purpose of CVAG payment, by additions, deletions, or revisions by agreement between Agency and CVAG if such changes are in accordance with the policies, procedures, and cost determination/expense eligibility criteria adopted by CVAG.

7. 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 further agrees that all such files and records will be made available to CVAG upon its reasonable request.

8. 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 ownership of the Project or to make it as 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 and employees, 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 taken in the performance of the 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, employees, and agents, and each of them, from and against all actions, damages, claims, losses, and expenses of every type and descriptions to which they may be subjected or put, by reason of, or resulting from, the actions of CVAG taken in the performance of the Agreement.

9. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall first be decided by the CVAG Executive Director or designee, who may consider 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.

10. 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 Parts 23, 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.

11. 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 telefacsimile ("FAX") 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 Indian Wells
44950 Eldorado
Indian Wells, CA 92210
Att.: Public Works Director/City Engineer
Telephone: (760) 776-0237
FAX No.: (760) 346-0407

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.

12. 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 matters dealt with herein or the duties of any party in relation thereto, not expressly set forth in this Agreement, is null and void.

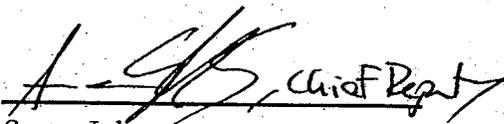
13. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenant to persons or circumstances 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.

14. 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 actions arising out of this Agreement, or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of actual attorneys' fees and costs incurred in such action or proceeding, without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

15. 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.

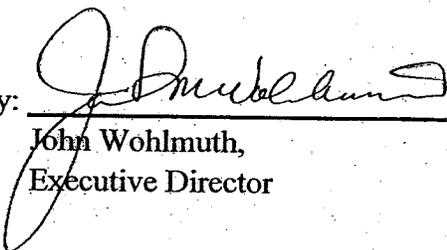
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on this date:

ATTEST: CITY OF INDIAN WELLS

By: 
Greg Johnson
City Clerk

By: 
Ed Monarch
Mayor

ATTEST: CVAG

By: 
John Wohlmuth,
Executive Director

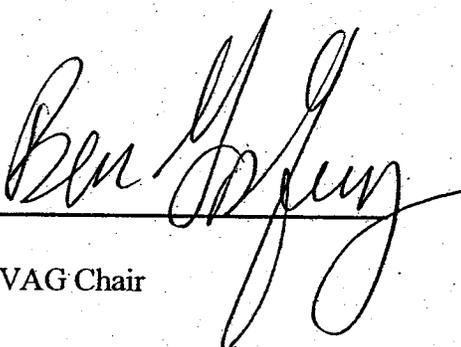
By: 
CVAG Chair

EXHIBIT "A"

"SCOPE OF SERVICES"

**CITY OF INDIAN WELLS- CVAG
FUTURE REIMBURSEMENT AGREEMENT**

" HIGHWAY 111 IMPROVEMENTS IN THE CITY OF INDIAN WELLS"

Construction of a sound wall along the north side of Highway 111 between Indian Wells Lane and just east of City Hall in the City of Indian Wells as mitigation for a future street widening to six lanes.

EXHIBIT "B"

"ESTIMATE OF COST"

**CITY OF INDIAN WELLS- CVAG
FUTURE REIMBURSEMENT AGREEMENT**

" HIGHWAY 111 IMPROVEMENTS IN THE CITY OF INDIAN WELLS"

Total Project cost	\$1,460,673
CVAG share @50%	\$730,336.50

EXHIBIT "C"

"PROJECT SCHEDULE"

**CITY OF INDIAN WELLS- CVAG
FUTURE REIMBURSEMENT AGREEMENT**

" HIGHWAY 111 IMPROVEMENTS IN THE CITY OF INDIAN WELLS"

ATTACHMENT 1

COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS

REGIONAL ARTERIAL PROGRAM

PROJECT COST DETERMINATION

AND

EXPENSE ELIGIBILITY

PROJECT COST DETERMINATION

AND

EXPENSE ELIGIBILITY

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1.0 INTRODUCTION

This section of the procedures manual outlines the process which shall be followed in determining project costs and project expense eligibility which has been approved to be constructed as part of the Coachella Valley Regional Transportation Program.

This section was developed by the Coachella Valley Association of Governments (CVAG) Transportation Technical Advisory Sub-Committee (TTAS). The primary purpose of this section is to provide a guideline for agencies to make application for a project for both Measure A and Transportation Uniform Mitigation Fee (TUMF) funding.

The project development process starts with an agency-initiated study after a highway improvement need has been identified.

The estimates for projects identified as part of the Regional Transportation Plan are addressed in the Regional Arterial Cost Estimate (RACE), dated March, 1993 and shall be updated biannually as part of the TUMF review process. The next update is scheduled for Fall, 1995.

2.0 COST ESTIMATE DEFINITIONS

- Construction An updated cost estimate for the costs to build the improvement per the approved plans and specifications.
- Engineering Engineering costs will usually be estimated on the basis of a percentage of the estimated construction costs.
- Right-of-Way Expenditures for right-of-way are to be prepared with an accuracy comparable to standards in the industry. Overhead charges need not be included.
- Scheduling Indicate status of project, giving a tentative schedule for engineering, right-of-way acquisition and construction. Discuss project phasing, if planned.

3.0 PROJECT IDENTIFICATION

Any project which is to be submitted for review and funding shall meet or provide all of the following:

- The proposed project shall appear on the approved April 1994 Transportation Project Prioritization Study updated list of projects.
- The project shall be clearly identified showing, as a minimum, the limits of the project, scope of work, anticipated start and completion dates, estimated project cost and funding sources.
- A general statement of the project. Why it is needed, etc.
- A preliminary design estimate for all design services.
- A preliminary construction cost estimate, to be updated once design is completed.
- A preliminary construction management and Agency project management cost estimate.

4.0 RIGHT-OF-WAY ACQUISITION AND OTHER ASSOCIATED COSTS

All right-of-way acquisition and other associated costs, including appraisals and any other costs allowed by state and federal law, are eligible for regional funding.

The agency will further submit a detailed list of costs associated with the right-of-way acquisition to CVAG for review and comment. CVAG will assess each cost and determine its eligibility for regional funding. All protests shall be sent to the Transportation Technical Advisory Sub-Committee for further review. All protests must be in writing and the grounds for protest clearly identified.

Where the likelihood of extensive right-of-way acquisition exists or the need for extensive relocation of homes and businesses, or in the case of new roadway extensions or openings or other extenuating physically or economical restraints so warrant, preliminary engineering, alignment and traffic studies shall be eligible for reimbursement or funding from regional funds.

Any excess property purchased to secure the necessary right-of-way will be deemed to belong to the Regional Arterial Program. Excess property will be disposed of in the best interests of the Regional Arterial Program, in order to recapture funds expended. Any recaptured funds will reduce the overall cost of the project.

5.0 PROJECT LIMITS

The lead agency submitting a proposed project for review and funding shall clearly identify the project limits. The limits of the project shall be defined as the beginning and the end of the construction. If more than one beginning and/or ending is necessary, clearly indicate that on the statement of the project limits.

A vicinity map shall be included with the project submittal package identifying where the project is located.

6.0 PROJECT FUNDING SOURCE

Project funding will come from both regional Measure A revenues and TUMF collected by CVAG member agencies. Other sources of funding may include local funds from the agency proposing the project, local gas tax funds, ISTEA funds, redevelopment funds, etc.

All funding sources should be considered by the agency prior to project submittal to CVAG for funding from the Regional system funds. CVAG will advance fund, for TUMF jurisdictions, a project up to 100% of the total approved, eligible, estimated project cost. Project contingency funds will not be funded. However, any additional costs incurred due to any change in scope of work may be submitted to CVAG for funding eligibility, and will be processed through CVAG's committee structure for approval.

7.0 PROJECT SCOPE OF WORK

A project scope of work narrative shall be submitted to CVAG with the submittal for expense eligibility and regional funding. The narrative shall include, but not be limited to, discussion of the following:

- Right-of-Way Acquisition and Relocation
- Project limits
- Typical roadway improvement section
- Vicinity map for project location identification
- Anticipated starting date - Engineering, R-O-W Acquisition and Construction
- Anticipated completion date - Engineering, R-O-W Acquisition and Construction
- Anticipated funding amount

8.0 PROJECT DESIGN (CIVIL)

The project design is the sole responsibility of the agency and/or agencies which are proposing and constructing the project. However, the design and construction standards as outlined in the Regional Arterial Cost Estimate (RACE), 1993 Update, shall be a guideline to be used by the designer for project design and construction standards. Any deviations should be identified, along with the rationale for such deviations.

The total project design services shall not exceed in cost 10% of the estimated construction costs, or as determined by CVAG.

9.0 PROJECT DESIGN (LANDSCAPING)

The following is a narrative of the landscape improvements which shall or shall not be eligible for regional funding:

- All new landscaping, electrical and irrigation work shall NOT be eligible for regional funding.
- Only new utility sleeves which are to be placed below the roadway surface for future use shall be eligible for regional funding.

Additionally, any existing landscaping, electrical and irrigation which is directly affected by the project shall be eligible for funding providing it is replaced "in kind".

10.0 PROJECT CONSTRUCTION FUNDING

All regionally funded agency project construction will consist of furnishing all materials, equipment, labor, tools and incidentals as required to construct the improvements as required by the approved plans, specifications and contract documents.

"Curb-to-curb" improvements are eligible for funding, with the exception of landscaping. (See section 9.0 for further detail on landscaping.) "Curb-to-curb" improvements include asphalt paving, striping, curb, etc. Sidewalks, bus-turnouts, bikelanes, etc. are not eligible for Regional Arterial funding.

Exception: One sidewalk and/or one bikelane will be eligible for Regional Arterial funding if it crosses a(n):

- 1. Regional Arterial Bridge**
- 2. Interstate 10 Interchange**
- 3. Interstate 86 Interchange**

All regionally funded agency projects will comply with the prevailing rates of wages and apprenticeship employment standards established by the State Director of Industrial Relations. Affirmative action to ensure against discrimination in employment practices on the basis of race, color, national origin, ancestry, sex or religion will also be required.

All regionally funded agency projects will affirmatively ensure that minority business enterprises will be afforded full opportunity to submit bids in response to this project and will not be discriminated against.

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 23, 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.

All regionally funded project bids shall be prepared on the approved agency proposal forms in conformance with the instructions to bidders.

All approved regional construction projects will be funded to 100% of the lesser of the following:

- CVAG approved project construction cost estimate.
- The lowest responsible bidder's award.

11.0 PROJECT CONSTRUCTION SURVEY

Construction survey is defined as all surveying and construction staking necessary for the construction of the project as determined by the engineer.

The cost of any additional surveying and/or construction staking primarily for the convenience of the contractor, not in conformance with usual and customary practices and for replacement of stakes lost as a result of the contractor's or agency's negligence, shall be the responsibility of the contractor and/or agency.

The agency shall be responsible for all resetting of Monumentation within public and/or private right-of-way that is destroyed by the construction operations unless it is itemized in the approved construction survey estimate.

12.0 PROJECT CONSTRUCTION MANAGEMENT

Project construction management costs shall be eligible for regional funding only if it is to fund one or more of the following:

- Construction inspection
- Materials testing
- Project management
- Construction Survey
- Geotechnical studies and reports
- Contract administration

The activities set forth above shall be eligible for regional funding based upon actual costs provided the total sum does not exceed 15% of the approved estimated construction costs.

13.0 PROJECT OVERSIGHT - AGENCY TIME

Project cost estimates should include an amount intended to allow Agency to recover an amount representing the costs incurred for the time of its employed staff in working on the project. **These amounts shall be eligible for regional funding based upon actual costs provided the total sum does not exceed 5% of the approved estimated project costs.**

14.0 PROJECT CONTINGENCY FUNDS

Project contingency funds shall not be granted at the beginning of a project. If a change in scope or design creates a need for a change order which may require additional funds, the agency shall make application with CVAG for expense eligibility from regional funds. Actual cost incurred shall only be eligible for funding.

15.0 REFERENCE DOCUMENTS

Transportation Project Prioritization Study, April 1994
Regional Arterial Cost Estimate, March 1993
Regional Arterial Financial Plan and Expenditure Program, November 1994
Coachella Valley Area Transportation Study, 1987
Coachella Valley Area Transportation Study, 1984