



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** March 12, 2013

**From:** Brad Miller, Town Engineer                              **Item No:** 7  
Engineering

**Subject:** APPROVE AND AUTHORIZE A CONSTRUCTION AGREEMENT WITH SAN BERNARDINO COUNTY PUBLIC WORKS, DEPARTMENT OF TRANSPORTATION, AND WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS, (SANBAG), FOR YATES ROAD WIDENING IN CONJUNCTION WITH THE YUCCA LOMA BRIDGE OVER THE MOJAVE RIVER.

**T.M. Approval:** \_\_\_\_\_                              **Budgeted Item:**  Yes    No    N/A

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### RECOMMENDED ACTION:

That the Town Council approve the Construction Agreement with San Bernardino County Public Works, Department of Transportation, and with San Bernardino Associated Governments, (SANBAG), for Yates Road Widening in conjunction with the Yucca Loma Bridge Project.

### SUMMARY:

The development of the Yucca Loma Bridge/ Yates Road/ Green Tree Blvd Transportation Corridor has been in process since 2006, and at this time Final Designs for the Yucca Loma Bridge and Yates Road Widening, and the acquisition of the necessary right of way are nearing completion. Construction of the new Yucca Loma Bridge over the Mojave River, and the widening of Yates Road in San Bernardino County are scheduled to begin during the summer of 2013. In preparation for the commencement of this major component of the Yucca Loma/ Yates Road / Green Tree Blvd Transportation Corridor, a Construction Agreement has been prepared between the Town of Apple Valley, San Bernardino County Public Works, Department of Transportation, and the San Bernardino Associated Governments (SANBAG), to formalize the construction responsibilities and funding commitments between the three agencies.

**BACKGROUND:**

There currently exists a Funding Agreement between the Town of Apple Valley and SANBAG for construction of the Yucca Loma Bridge. The agreement before Town Council this evening constitutes a Construction Agreement enabling the Town of Apple Valley to serve as lead agency for construction of the Yates Road Widening that is required in connection with the Yucca Loma Bridge. The Agreement also defines the funding responsibility of San Bernardino County and of SANBAG to reimburse the Town of Apple Valley for construction costs relating to work in the County area.

**FISCAL IMPACT:**

There are sufficient funds approved for this Agreement in the current project budget.

**ATTACHMENTS:**

Construction Agreement with San Bernardino County Public Works, Department of Transportation, and with San Bernardino Associated Governments, (SANBAG), for Construction along Yates Road in conjunction with the Yucca Loma Bridge over the Mojave River.

**VICINITY MAP:**





County of San Bernardino  
**F A S**  
**STANDARD CONTRACT**

**FOR COUNTYUSE ONLY**

<input checked="" type="checkbox"/> New	FAS Vendor Code		<b>SC</b>	Dept. TRA	<b>A</b>	Contract Number	
<input type="checkbox"/> Change							
<input type="checkbox"/> Cancel							
ePro Vendor Number					ePro Contract Number		
County Department Public Works - Transportation			Dept. TRA	Orgn. TRA	Contractor's License No.		
County Department Contract Representative Eric Jacobsen, Sup. Trans. Analyst				Telephone (909)387-8166		Total Contract Amount	
<input type="checkbox"/> Revenue		<input checked="" type="checkbox"/> Encumbered		<input type="checkbox"/> Unencumbered		<input type="checkbox"/> Other:	
If not encumbered or revenue contract type, provide reason:							
Commodity Code		Contract Start Date		Contract End Date		Original Amount \$1,867,635	Amendment Amount
Fund SAA	Dept. TRA	Organization TRA	Appr. 200	Obj/Rev Source 2445	GRC/PROJ/JOB No 14H14218	Amount \$ 1,867,635	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount \$	
Project Name Yates Road Construction				Estimated Payment Total by Fiscal Year			
		FY 12/13		Amount 1,867,635	I/D I		

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the COUNTY, and

Name  
 San Bernardino County Transportation Authority  
 Address  
 1170 W. 3rd Street, 2nd Floor

hereinafter called AUTHORITY

San Bernardino, CA 92410  
 Telephone (909) 884 - 8276  
 Federal ID No. or Social Security No.

Name  
 Town of Apple Valley  
 Address  
 14955 Dale Evans Parkway

hereinafter called APPLE VALLEY

Apple Valley, CA 92307  
 Telephone (760) 240 - 7000  
 Federal ID No. or Social Security No.

**IT IS HEREBY AGREED AS FOLLOWS:**

WHEREAS, COUNTY, AUTHORITY and APPLE VALLEY desire to cooperate and jointly participate in a road improvement project along Yates Road, between Fortuna Lane and Park Road, located within the unincorporated area of the COUNTY in Apple Valley (hereinafter referred to as the "PROJECT"); and

WHEREAS, PROJECT consists of the following: the widening of Yates Road, from Fortuna Lane to Park Road, from two-lanes to four-lanes, including intersection improvements, signal and addition of soundwalls, as more particularly set forth in Attachment "C", attached hereto and incorporated herein by reference; and

WHEREAS, AUTHORITY and APPLE VALLEY previously entered into Contract No. C12227 on April 4, 2012, to construct a new bridge along Yucca Loma Road over the Mojave River at the terminus of Yucca Loma Road (hereinafter referred to as "Yucca Loma Bridge"); and

WHEREAS, AUTHORITY prepared a study referred to herein as the "Nexus Study" in November 2009 in which the document identifies Major Local Highway Program projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, the PROJECT and the Yucca Loma Bridge are identified in the Victor Valley Subarea Major Local Highway Program Project List and the Nexus Study; and the PROJECT and the Yucca Loma Bridge will be carried out in accordance with the policies of the Measure I 2010-2040 Strategic Plan ("STRATEGIC PLAN"), including the use of Development Impact Fees by COUNTY and APPLE VALLEY to pay their shares of the projects' costs; and

WHEREAS, AUTHORITY, COUNTY and APPLE VALLEY wish to enter into this Construction Responsibility and Funding Agreement ("AGREEMENT") for Construction and Construction Support Services necessary to manage and construct the PROJECT concurrently with the Yucca Loma Bridge project to minimize public inconvenience. Yates Road is a link to the Yucca Loma Bridge and in order for the bridge to operate at its full capacity, Yates Road improvements are required; and

WHEREAS, California Streets and Highways Code section 1710 provides that a city and county may agree that the city shall construct designated county highways or portions thereof within the unincorporated territory, the cost thereof to be paid by the county to the city; and

WHEREAS, APPLE VALLEY will serve as lead agency in the construction of the PROJECT and the Yucca Loma Bridge project; and

WHEREAS, construction costs for the PROJECT are estimated to be \$10,492,330. AUTHORITY's share of the PROJECT cost is \$8,624,695 (82.2%), COUNTY's share of the PROJECT cost is \$1,867,635 (17.8%) and APPLE VALLEY's share of the PROJECT is zero (0%) percent, as more particularly set forth in Attachment "A", attached hereto and incorporated herein by reference; and

WHEREAS, AUTHORITY, COUNTY and APPLE VALLEY desire to set forth responsibilities and obligations of each as they pertain to contracting, funding, construction and administration of the proposed PROJECT; and

WHEREAS, it is anticipated that a future amendment to this AGREEMENT will be necessary to reconcile any outstanding payments and each Party's overall contribution for the PROJECT's construction work.

NOW, THEREFORE, AUTHORITY, COUNTY and APPLE VALLEY agree to the following:

1.0 APPLE VALLEY AGREES:

- 1.1 To serve as the Lead Agency in the construction of the PROJECT In conjunction with the Yucca Loma Bridge project.
- 1.2 To construct the PROJECT by contract in accordance with the plans and specifications of APPLE VALLEY, which have been reviewed and approved by AUTHORITY and COUNTY, and the Caltrans Design Manual, 20-year design life, to the satisfaction of and subject to concurrence of COUNTY.

- 1.3 To advertise, award, administer, and initially fund the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code applicable to towns, such as APPLE VALLEY, and require, as well as enforce, compliance by APPLE VALLEY's contractors with all applicable laws and regulations, including Labor Code sections 1720 et seq. and 1770 et seq. that concern the payment of prevailing wages in the same manner as APPLE VALLEY's own public works projects. APPLE VALLEY shall indemnify, defend (with counsel reasonably approved by AUTHORITY and COUNTY), and hold harmless AUTHORITY and COUNTY and their officers, employees, volunteers, and agents from any and all claims, actions, losses, damages, and/or liabilities as provided in Section 4.
- 1.4 To require all contractors and vendors working on the PROJECT to have appropriate and adequate insurance coverage for the mutual protection and benefit of the Parties. Except for Workers' Compensation, Errors and Omissions and Professional Liability policies, APPLE VALLEY shall require and ensure that all APPLE VALLEY contractors/subcontractors for the PROJECT shall have insurance policies that contain endorsements naming the COUNTY and AUTHORITY, and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. Such additional insured coverage shall be in the form of ISO additional insured endorsements 20 10 10 01 and 20 37 10 01, which all parties acknowledge to be sufficient.
- 1.5 To provide adequate inspection of all items of work performed under the construction contract(s) with APPLE VALLEY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by COUNTY and AUTHORITY. APPLE VALLEY shall provide copies of any records of inspection and materials testing to COUNTY and AUTHORITY within ten (10) days of APPLE VALLEY's receipt of written demand from COUNTY and AUTHORITY for such records. This shall be included as a PROJECT cost.
- 1.6 In accordance with the STRATEGIC PLAN, to be responsible for zero (0%) percent share of the actual PROJECT construction costs, as more particularly set forth in Attachment "A" attached hereto and incorporated herein by reference.
- 1.7 To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) and the Single Audit Act of 1984, as amended, as outlined in the Federal Office of Management and Budget (OMB) Circular A-133, to support AUTHORITY and COUNTY's requests for reimbursement, payment vouchers, or invoices which segregate and accumulate Eligible Construction Expenditures and submit to AUTHORITY and COUNTY monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by APPLE VALLEY.
- 1.8 To submit to AUTHORITY and COUNTY an itemized accounting of actual PROJECT costs incurred by APPLE VALLEY to date and which have not already been paid by AUTHORITY or COUNTY, and an invoice for AUTHORITY's (82.2%) and COUNTY's (17.8%) proportionate shares of the PROJECT costs, as provided herein. Costs shall be amended following acceptance by APPLE VALLEY, AUTHORITY and COUNTY of the final construction cost accounting. APPLE VALLEY shall submit the final accounting and invoice to AUTHORITY and COUNTY no later than one hundred and twenty (120) calendar days following the completion of PROJECT work.
- 1.9 To reimburse AUTHORITY and COUNTY any costs that are determined by subsequent audit to be unallowable within ninety (90) calendar days of APPLE VALLEY receiving notice of audit findings, which time shall include an opportunity for APPLE VALLEY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and APPLE VALLEY fails to reimburse monies due to AUTHORITY and COUNTY within ninety (90) calendar days of audit finding, or within such other period as may be agreed between all Parties hereto, the AUTHORITY and COUNTY reserves the right to withhold future payments due to APPLE VALLEY from any source under AUTHORITY's and COUNTY's control.
- 1.10 To cooperate in having a PROJECT-specific audit completed by COUNTY at COUNTY's option, upon completion of the PROJECT construction work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with the AGREEMENT.
- 1.11 To accept all payments from COUNTY via electronic funds transfer (EFT) directly deposited into the APPLE VALLEY's designated checking or other bank account. APPLE VALLEY shall

promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

- 1.12 AUTHORITY and COUNTY are eligible to serve as the "Legally Responsible Person"("LRP") for the PROJECT pursuant to the Statewide Construction General Permit, State Water Resources Control Board Order No. 2009-009-DWQ (as amended by Order No. 2010-0014-DWQ), NPDES No. CAS000002 (CGP). However, AUTHORITY and COUNTY hereby authorize APPLE VALLEY to serve as the LRP under the following exceptional circumstances: the PROJECT is a collaborative effort between the AUTHORITY, COUNTY and APPLE VALLEY; the PROJECT is subject to this AGREEMENT, which designates APPLE VALLEY as the Lead Agency for all construction; under the AGREEMENT, the AUTHORITY and COUNTY are not authorized to submit documents required by the CGP.

2.0 COUNTY AGREES:

- 2.1 In accordance with the STRATEGIC PLAN, to be responsible for 17.8% of the total actual PROJECT construction costs as more particularly set forth in Attachment "A". Except as provided in Paragraph 4.12, COUNTY's share of PROJECT costs shall not exceed \$1,867,635.
- 2.2 To reimburse APPLE VALLEY within thirty (30) days after APPLE VALLEY submits to COUNTY an original and two copies of the signed invoices in the proper form covering eligible PROJECT construction expenditures as defined in Paragraph 4.8, that were incurred by APPLE VALLEY, consistent with the invoicing requirements of the STRATEGIC PLAN, including backup information as COUNTY may require. Invoices may be submitted to COUNTY as frequently as monthly.
- 2.3 To cooperate in having a PROJECT-specific audit completed by APPLE VALLEY, at its option, upon completion of the PROJECT construction work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this AGREEMENT.
- 2.4 To operate and maintain those portions of the PROJECT within the unincorporated area of the COUNTY, in accordance with COUNTY regulations, policies and procedures after AUTHORITY's, COUNTY's and APPLE VALLEY's acceptance of the construction contract work.
- 2.5 To identify and provide a liaison representative to attend all regular and special meetings with the construction management team and contractor to resolve any and all construction and administrative matters pertaining to the PROJECT.
- 2.6 To provide liaison staff to assist and address any public relations issues with County residents that pertain to the PROJECT.
- 2.7 Provide a no-cost permit to APPLE VALLEY for its work in COUNTY right-of-way.

3.0 AUTHORITY AGREES:

- 3.1 In accordance with the STRATEGIC PLAN, to be responsible for 82.2% of the total actual PROJECT construction costs, as more particularly set forth in Attachment "A". Except as provided in Paragraph 4.12, AUTHORITY's share of PROJECT costs shall not exceed \$8,624,695.
- 3.2 To reimburse APPLE VALLEY within thirty (30) days after APPLE VALLEY submits to AUTHORITY an original and two copies of the signed invoices in the proper form covering eligible PROJECT construction expenditures as defined in Paragraph 4.8, that were incurred by APPLE VALLEY, consistent with the invoicing requirements of the STRATEGIC PLAN, including backup information as AUTHORITY may require. Invoices may be submitted to AUTHORITY as frequently as monthly.
- 3.3 To cooperate in having a PROJECT-specific audit completed by APPLE VALLEY, at APPLE VALLEY's option, upon completion of the PROJECT construction work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this AGREEMENT.
- 3.4 To cooperate in having a PROJECT-specific audit completed by COUNTY, at COUNTY's option, upon completion of the PROJECT construction work. The audit should justify and validate that all funds expended on the PROJECT were used in conformance with this AGREEMENT.
- 3.5 To identify and provide a liaison representative to attend all regular and special meetings with the construction management team and contractor to resolve any and all construction and administrative matters pertaining to the PROJECT.

4.0 IT IS MUTUALLY AGREED:

- 4.1 Neither AUTHORITY nor any officer, director, employee or agent thereof is responsible for injury, damage or liability occurring or arising by reason of anything done or omitted to be done by APPLE VALLEY and/or COUNTY under or in connection with any work, authority or jurisdiction delegated to APPLE VALLEY and/or COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLE VALLEY and/or COUNTY shall fully defend, indemnify and save harmless AUTHORITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by APPLE VALLEY and/or COUNTY under or in connection with any work, authority or jurisdiction delegated to APPLE VALLEY and/or COUNTY under this Agreement.
- 4.2 Neither APPLE VALLEY nor any officer, director, employee or agent thereof is responsible for injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY and/or COUNTY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY and/or COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY and/or COUNTY shall fully defend, indemnify and save harmless APPLE VALLEY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY and/or COUNTY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY and/or COUNTY under this Agreement.
- 4.3 Neither COUNTY nor any officer, director, employee or agent thereof is responsible for injury, damage or liability occurring or arising by reason of anything done or omitted to be done by APPLE VALLEY and/or AUTHORITY under or in connection with any work, authority or jurisdiction delegated to APPLE VALLEY and/or AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, APPLE VALLEY and/or AUTHORITY shall fully defend, indemnify and save harmless COUNTY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by APPLE VALLEY and/or AUTHORITY under or in connection with any work, authority or jurisdiction delegated to APPLE VALLEY and/or AUTHORITY under this Agreement.
- In the event the COUNTY, AUTHORITY and/or APPLE VALLEY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY, AUTHORITY and/or APPLE VALLEY shall indemnify the other to the extent of its comparative fault. Furthermore, if the COUNTY, AUTHORITY or APPLE VALLEY attempts to seek recovery from the other for Worker's Compensation benefits paid to an employee, the COUNTY, AUTHORITY and APPLE VALLEY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
- 4.4 In the event of litigation arising from this AGREEMENT, each Party to the AGREEMENT shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees incurred in litigation concerning Paragraphs 4.1, 4.2, 4.3 and 4.4 indemnification.
- 4.5 COUNTY and APPLE VALLEY are self-insured public entities for the purpose of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrants that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of COUNTY and APPLE VALLEY's performance of this AGREEMENT. AUTHORITY maintains insurance for these purposes.
- 4.6 If a federal appropriation or earmark is used for PROJECT construction costs, application of those funds shall be consistent with AUTHORITY Policy 40013/VV-MLH-27.



- 4.7 Eligible construction expenditures shall include only those costs incurred by APPLE VALLEY for PROJECT activities that are described in Attachment "C" and as shown in approved contract documents, including contract change orders, and shall not include escalation or interest.
- 4.8 Within one (1) working day of construction bid opening, APPLE VALLEY shall notify AUTHORITY and COUNTY of the bids received and amounts thereof. Within ten (10) working days thereafter, APPLE VALLEY shall determine the total construction cost of the PROJECT, including construction bid amount, the construction management bid amount, and the contingency amount. If the total construction cost is over \$10,492,330, the Parties agree to meet and confer in good faith to determine how to resolve any potential cost overruns beyond the respective program funding limits.
- 4.9 If either COUNTY or AUTHORITY or APPLE VALLEY requests additional work that is beyond the scope of the original PROJECT, and not considered by all parties to be a necessary part of the PROJECT, said work, if approved by all parties, will be paid solely by the agency requesting the work, unless all parties agree by written amendment to allocate the cost in accordance with the percentage allocation provided herein, or in some other mutually acceptable manner.
- 4.10 In the event that a party intends to cancel this AGREEMENT based upon the bids or amount thereof, said party shall notify the other parties at a reasonable time prior to the awarding of a contract to construct the PROJECT to avoid any detrimental reliance by the contracting party, contractor or potential contractor.
- 4.11 The Parties acknowledge that final PROJECT construction costs may ultimately exceed current estimates of construction costs. Any additional PROJECT construction costs resulting from increased bid prices, change orders, or arising from unforeseen site conditions, including Utility relocation over the estimated total PROJECT funding limit of \$10,492,330 shall be divided by AUTHORITY and COUNTY (based on their proportionate share of the PROJECT cost). In no event shall COUNTY be responsible for PROJECT costs that exceed twenty-five percent (25%) of the not to exceed amount identified in Paragraph 2.1 absent a written amendment to this AGREEMENT. In no event shall AUTHORITY be responsible for PROJECT costs that exceed twenty-five percent (25%) of the not to exceed amount identified in Paragraph 3.1 absent a written amendment to this AGREEMENT.
- 4.12 In the event that change orders are required during the course of the PROJECT, said change orders must be approved in the form and substance as set forth in Attachment "B", Contract Change Order Review/Approval, attached to and incorporated into this AGREEMENT, and approved by COUNTY, AUTHORITY and APPLE VALLEY. Contract Change Order forms will be delivered by fax and must be returned within two (2) working days. The AUTHORITY or COUNTY shall not unreasonably withhold approval of change orders. If an AUTHORITY and/or COUNTY disapproved or modified change order is later found to be a cost of the PROJECT, then the AUTHORITY and/or COUNTY shall be responsible only for those costs, awards, judgments or settlements associated with the change order disapproved or modified by the respective agency.
- 4.13 If this AGREEMENT is funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009, the COUNTY, AUTHORITY and APPLE VALLEY shall comply with the following provisions:

**Use of ARRA Funds and Requirements** - This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the

Whistleblower Protection

APPLE VALLEY agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

*APPLE VALLEY agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.*

- 4.14 This AGREEMENT shall terminate upon PROJECT completion as described in Paragraph 4.16 below, or on June 30, 2017, whichever occurs first, but may be cancelled upon a thirty (30) days advance written notice of any party, provided however, none of the Parties may cancel this AGREEMENT after APPLE VALLEY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, all PROJECT costs required to be paid by the Parties prior to the effective date of cancellation shall be paid by the Parties based on their proportionate share of the PROJECT cost.
- 4.15 Except with respect to the Parties' indemnification obligation contained herein, and if the Parties have not elected to cancel the AGREEMENT pursuant to Paragraph 4.15 of this AGREEMENT, this AGREEMENT shall terminate upon completion of the PROJECT construction and payment of final billing by or prorata refunds to AUTHORITY and COUNTY for their shares of the PROJECT costs.
- 4.16 This AGREEMENT is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by AUTHORITY, COUNTY or APPLE VALLEY.
- 4.17 This AGREEMENT contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. No supplement, modification or amendment of this AGREEMENT shall be binding unless executed in writing and signed by all Parties.
- 4.18 This AGREEMENT shall be governed by the laws of the State of California. Any action or proceeding between COUNTY, AUTHORITY and APPLE VALLEY concerning the interpretation or enforcement of this AGREEMENT or which arises out of or is in any way connected with this AGREEMENT shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.
- 4.19 The Parties agree that each Party and any authorized representative, designated in writing to the Parties and upon reasonable notice, shall have the right during normal business hours to examine all Parties' financial books and records with respect to this AGREEMENT. The Parties agree to retain their books and records for a period of three (3) years from the later of: a) the date on which this AGREEMENT terminates; or b) the date on which such book or record was created.
- 4.20 Time is of the essence for each and every provision of this AGREEMENT.
- 4.21 Since the Parties or their agents have participated fully in the preparation of this AGREEMENT, the language of this AGREEMENT shall be construed simply, according to its fair meaning, and not strictly for any or against any Party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this AGREEMENT.

- 4.22 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppels or otherwise.
- 4.23 If a court of competent jurisdiction declares any portion of this AGREEMENT invalid, illegal or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this AGREEMENT is frustrated.
- 4.24 This AGREEMENT may be signed in counterparts, each of which shall constitute an original.
- 4.25 This AGREEMENT will be effective on the date it is signed by all Parties.
- 4.26 The recitals are incorporated into the body of this AGREEMENT.
- 4.27 This AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of all Parties.

SIGNATURES ARE ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties to these presents have hereunto set their hands.

COUNTY OF SAN BERNARDINO

SAN BERNARDINO COUNTY TRANSPORTATION  
AUTHORITY

By \_\_\_\_\_  
Janice Rutherford, Chair, Board of Supervisors

By \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Dated: \_\_\_\_\_

Name Janice Rutherford  
*(Print or type name of person signing contract)*

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Title President, Board of Directors  
*(Print or Type)*

Laura H. Welch  
Clerk of the Board of Supervisors  
of the County of San Bernardino

Dated: \_\_\_\_\_

By \_\_\_\_\_  
*Deputy*

Address: 1170 West Third Street, San Bernardino CA 92410

TOWN OF APPLE VALLEY

APPROVED AS TO FORM AND PROCEDURE:

By \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

By \_\_\_\_\_  
Eileen Monaghan Teichert, General Counsel

Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Dated: \_\_\_\_\_

Title \_\_\_\_\_  
*(Print or Type)*

CONCURRENCE:

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Jeffery Hill, Contract Administrator

Address \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND PROCEDURE:

By \_\_\_\_\_, APPLE VALLEY Attorney

Dated: \_\_\_\_\_

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to BOS for Signature
▶ _____ CountyCounsel	▶ _____	▶ _____ Department Head
Date _____	Date _____	Date _____

**ATTACHMENT A**  
**ESTIMATE OF PROJECT COSTS**

**FOR COUNTY OF SAN BERNARDINO/SAN BERNARDINO COUNTY TRANSPORTATION  
AUTHORITY/TOWN OF APPLE VALLEY  
FOR YATES ROAD IMPROVEMENTS**

**APPLE VALLEY AREA**

DESCRIPTION	ITEM	TOTAL COST OF PROJECT	COUNTY % OF PROJECT	COUNTY SHARE	AUTHORITY % OF PROJECT	AUTHORITY SHARE*	APPLE VALLEY % OF PROJECT	APPLE VALLEY SHARE
YATES ROAD Improvements	CONSTRUCTION	\$8,962,400	17.8%	\$1,595,307	82.2%	\$7,367,093	0%	\$0
	CONSTRUCTION ADMINISTRATION	\$1,100,000	17.8%	\$195,800	82.2%	\$904,200	0%	\$0
	Construction and Bidding Support Services	\$94,400	17.8%	\$16,803	82.2%	\$77,597	0%	\$0
	Restoration Area	\$335,530	17.8%	\$59,724	82.2%	\$275,806	0%	\$0
	<b>TOTAL</b>	<b>\$10,492,330</b>	<b>17.8%</b>	<b>\$1,867,635</b>	<b>82.2%</b>	<b>\$8,624,695</b>	<b>0%</b>	<b>\$0</b>

NOTE:

\*AUTHORITY's Share can be from sources under control of AUTHORITY including but not limited to Measure I Major Local Highway Program (MLHP), State Transportation Improvement Program (STIP), Surface Transportation Program (STP), or State/Local Partnership Program (SLPP) funds without necessitating an amendment of this AGREEMENT.

**ATTACHMENT B**

**CONTRACT CHANGE ORDER REVIEW/APPROVAL  
PROJECT: YATES ROAD IMPROVEMENT**

**COUNTY OF SAN BERNARDINO CONTRACT #**

File: H14218

Proposed Contract Change Order No. \_\_\_\_\_ has been reviewed in accordance with the existing agreements with Apple Valley, County Transportation Authority and County of San Bernardino for the above project and the following shall apply:

DATE OF COUNTY TRANSPORTATION AUTHORITY ACTION: \_\_\_\_/\_\_\_\_/\_\_\_\_

APPROVED for Implementation with 100% Participation by COUNTY TRANSPORTATION AUTHORITY

APPROVED Subject to Comments/Revisions Accompanying This Document

APPROVED With Limited Funding Participation by COUNTY TRANSPORTATION AUTHORITY

\_\_\_\_\_% of Actual Cost to be Funded by COUNTY TRANSPORTATION AUTHORITY

COUNTY TRANSPORTATION AUTHORITY Participation Not to Exceed \$ \_\_\_\_\_

DISAPPROVED -Not Acceptable to COUNTY TRANSPORTATION AUTHORITY

DATE OF COUNTY ACTION: \_\_\_\_/\_\_\_\_/\_\_\_\_

APPROVED for Implementation with 100% Participation by COUNTY

APPROVED Subject to Comments/Revisions Accompanying This Document

APPROVED With Limited Funding Participation by COUNTY

\_\_\_\_\_% of Actual Cost to be Funded by COUNTY

COUNTY Participation Not to Exceed \$ \_\_\_\_\_

DISAPPROVED -Not Acceptable to COUNTY

***Note: Approval under any of the above conditions shall in no case be construed as agreement to increase the total financial participation beyond that prescribed in the existing SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, TOWN OF APPLE VALLEY and COUNTY OF SAN BERNARDINO agreements without separate amendment to said agreements. Net increases in costs deriving from this and previously approved Contract Change Orders shall not cause the total construction costs to exceed the sum of the authorized contract total and contingency amounts.***

Comments, as follows and/or attached, are conditions of the above action?  YES  NO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED: \_\_\_\_\_

TITLE: \_\_\_\_\_

Distribution:

Signed Original Returned to Resident Engineer (FAX # 760-240-7399)

Signed Original for SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY and TOWN OF APPLE VALLEY File

**ATTACHMENT C**

Project Description and Proposed Improvements  
Yates Road Project

FTIP ID No.: 200836

As part of this phase of construction, Yates Road will be widened from two lanes to four lanes from the westerly terminus of Yucca Loma Bridge (near Fortuna) to Park Road and will transition from four lanes to two lanes just west of Park Road. Various items of work include, but are not limited to, soundwalls, pavement reconstruction, road widening, striping, inverted dirt median, signal at Park Road, placement of embankment, proportionate share of mitigation restoration area (apx.26% of total), and other work as shown on the approved construction plans, including approved contract change orders, etc. As part of a later phase of work, Yates Road as it connects to Ridgecrest Road will be realigned to the west to allow connection to the proposed Green Tree Boulevard extension.

CONSTRUCTION Start:       April 2013  
CONSTRUCTION End:        December 2014