



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** May 13, 2014

From: Brad Miller, Town Engineer **Item No:** 10
Engineering Department

Subject: BEAR VALLEY ROAD BIKE PATH PROJECT- MEMORANDUM OF UNDERSTANDING BETWEEN THE COLLEGE AND THE TOWN

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

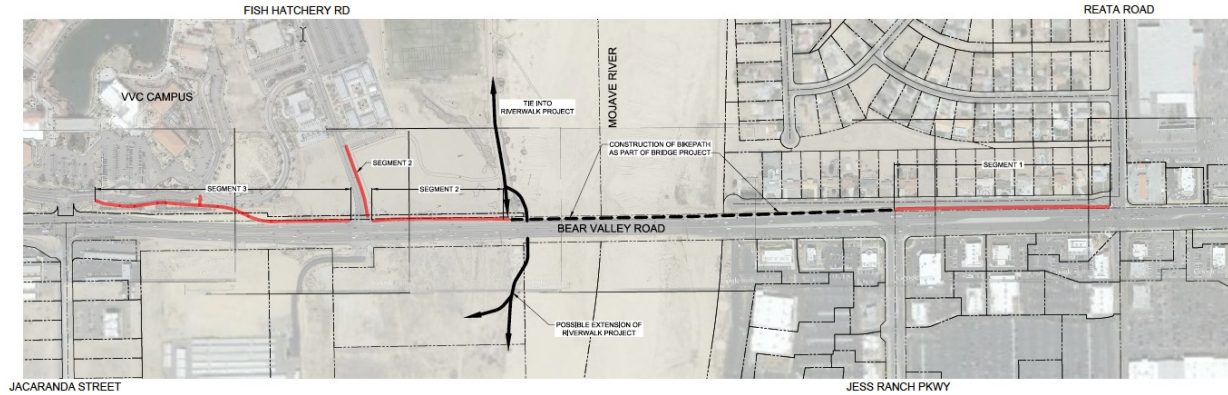
RECOMMENDED ACTION:

Approve the Memorandum of Understanding between the College and the Town of Apple Valley for the construction of a new Class 1 Bike Path that will connect the Town of Apple Valley to the upper campus of the College.

SUMMARY:

The Town of Apple Valley accepted the responsibility to become the lead agency for the bike path project, which starts in Apple Valley and continues west to the Victor Valley College along the north side of Bear Valley Road. In December, 2011, the San Bernardino Associated Governments (SANBAG) Board approved an allocation to the Town of Apple Valley in the amount of \$386,370, utilizing Article 3, Transportation Development Act (TDA) funds for the construction phase of the project. The Town is providing matching funds of 20%.

The project has three segments: 1. From Reata Road to Jess Ranch Parkway, 2. From the Bear Valley Road Bridge to Mojave Fish Hatchery Road, and, 3. From Mojave Fish Hatchery Road to the Upper Campus.



On April 14, 2013, the Town of Apple Valley entered an agreement with Hall & Forman, Inc. for design services on the Bear Valley Road Bike Path.

When preliminary bike path alignments were determined, the Town presented the project with its various alignments and a Memorandum of Understanding to Victor Valley College (VVC) Board of Directors. At their February 11, 2014 Board meeting, the VVC Board approved the Memorandum of Understanding between the College and the Town of Apple Valley for the construction of a new Class 1 Bike Path that will connect the Town of Apple Valley to the upper campus of the College.

Attached is the Memorandum of Understanding, approved by the Town Attorney as to content, for Council's review and approval.

FINANCIAL IMPACT:

The current budget reflects the SANBAG grant for this project. As a result, there are sufficient funds approved for the project.



VICTOR VALLEY COLLEGE
18422 Bear Valley Road
Victorville, CA 92395-5850
(760) 245-4271, ext. 2199
Michelle.Messer@vvc.edu

Michelle Messer
Administrative Secretary II
Facilities Construction
Administrative Services

February 18, 2014

Mailed

Mr. Richard Pederson, P.E.
Deputy Town Engineer
Town of Apple Valley
14055 Dale Evans Parkway
Apple Valley, CA 92307

Reg: Class I Bike Path Memorandum of Understanding

Dear Mr. Pederson,

At the February 11, 2014 Victor Valley College Board of Trustees meeting, the Board approved the Memorandum of Understanding (MOU) with the Town of Apple Valley for the Bear Valley Road Class I Bike Path project.

Enclosed are two signed originals of the MOU. In lieu of VVC attorney signatures on the signature page, I have enclosed our Contract Approval Form, sign by our county council which indicates that it was reviewed and approved by her.

Once you have these signed, please return one original to my attention at the address on the left. If you will send me an email to the Email address to the left, I will scan over the Board Certification minutes of this MOU approval action as soon as I receive it.

Please let me know if there is anything further needed from our end.

Thank you,

Michelle Messer

Michelle Messer
Administrative Secretary II
Administrative Services &
Facilities Construction & Contracts

Enclosures

MEMORANDUM OF UNDERSTANDING

Project: Bear Valley Road Class I Bike Path.

Parties: Town of Apple Valley and the Victor Valley Community College

THIS Memorandum of Understanding is entered into in the State of California by and between the Town of Apple Valley, hereinafter called APPLE VALLEY,

Address:

14955 Dale Evans Parkway

Apple Valley, CA 92307

Telephone:

(760) 240-7000

and the Victory Valley Community College hereinafter called the COLLEGE,

Address:

18422 Bear Valley Rd, Victorville, CA 92395

Telephone:

(760) 245-4271

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, COLLEGE and APPLE VALLEY desire to cooperate and jointly participate in a Class 1 Bike Path project along Bear Valley Road, between the Mojave River Bridge and Jacaranda Street, located within the Public Right of Way of Bear Valley Road and the property of the COLLEGE (hereinafter referred to as the "PROJECT"); and

WHEREAS, the PROJECT consists of the following: the construction of a new Class I bike path along the north side of Bear Valley Road from the Mojave River Bridge at the easterly property of the Victor Valley Community College (VVC) to the upper campus and connecting at Jacaranda Street including the addition of retaining walls, as more particularly set forth in Attachment "A", attached hereto and incorporated herein by reference; and

WHEREAS, COLLEGE provided APPLE VALLEY a letter of support dated March 16, 2011, for the grant application of funds for the construction of the PROJECT set forth in Attachment "B", attached hereto and incorporated herein by reference; and

WHEREAS, APPLE VALLEY prepared a grant application for Transportation Development Act (TDA) Article 3 Pedestrian and Bicycle Facilities Program funds,

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officers, employees, volunteers, and agents from any and all claims, actions, losses, damages, and liability as provided in Section 4.

- 1.6 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 COLLEGE and its officers, employees, agents and volunteers as an additional insured to all liability insurance policies 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.
- 1.7 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 COLLEGE. If requested by COLLEGE, APPLE VALLEY shall provide copies of any records of inspection and materials testing to COLLEGE within ten (10) days of APPLE VALLEY's receipt of written demand from COLLEGE for such records.

2.0 COLLEGE AGREES:

- 2.1 To be responsible for 0% of the total actual PROJECT construction costs.
- 2.2 To operate and maintain those portions of the PROJECT within and adjacent to the property of the COLLEGE, west of the Bear Valley Road Bridge, in accordance with COLLEGE regulations, policies and procedures after COLLEGE's and APPLE VALLEY's acceptance of the construction contract work.
- 2.3 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.
- 2.4 To provide liaison staff to assist and address any public relations issues with COLLEGE that pertain to the PROJECT.
- 2.5 To provide a no-cost permit to APPLE VALLEY for its work in the COLLEGE property.

3.0 IT IS MUTUALLY AGREED:

- 3.1 It is understood and agreed that, pursuant to Government Code Section 895.4, COLLEGE (for purposes of this paragraph, each 'INDEMNITOR") shall fully defend, indemnify and hold harmless APPLE VALLEY, its officers, directors, employees or agents from all claims, suits, actions, losses, damages and liability 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 INDEMNITOR under or in connection with any work, authority or jurisdiction delegated to INDEMNITOR under this AGREEMENT.

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- 3.2 It is understood and agreed that, pursuant to Government Code Section 895.4, APPLE VALLEY (for purposes of this paragraph, each 'INDEMNITOR') shall fully defend, indemnify and hold harmless COLLEGE, its officers, directors, employees or agents from all claims, suits, actions, losses, damages and liability 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 INDEMNITOR under or in connection with any work, authority or jurisdiction delegated to INDEMNITOR under this AGREEMENT.
- 3.3 In the event the COLLEGE, and APPLE VALLEY is/are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the AGREEMENT, the COLLEGE, and APPLE VALLEY shall indemnify the other to the extent of its comparative fault. Furthermore, if the COLLEGE, or APPLE VALLEY attempts to seek recovery from the other for Worker's Compensation benefits paid to an employee, the COLLEGE, and APPLE VALLEY agree that any alleged negligence of the employee shall not be construed against the employer of that employee. This shall have no application to any pending suit that may exist at the time of the execution of this AGREEMENT.
- 3.4 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 3.1, 3.2, 3.3 and 3.4 indemnification.
- 3.5 COLLEGE and APPLE VALLEY are self-insured public entities for the purpose of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrant that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of COLLEGE and APPLE VALLEY's performance of this AGREEMENT.
- 3.6 Eligible construction expenditures shall include only those costs incurred by APPLE VALLEY for PROJECT activities that are described in Attachment "A" and as shown in approved contract documents, including contract change orders, and shall not include escalation or interest.
- 3.7 If either COLLEGE 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.
- 3.8 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.
- 3.9 The Parties acknowledge that final PROJECT construction costs may ultimately exceed current estimates of construction costs. In no event shall the COLLEGE be responsible for any additional PROJECT construction costs or any costs that exceed total PROJECT cost estimates resulting from increased bid prices, change

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- orders, or arising from unforeseen site conditions, including Utility relocation, over the estimated total PROJECT funding limit of \$482,963.
- 3.10 This AGREEMENT shall terminate upon PROJECT completion as described in Paragraph 4.16 below, or on June 30, 2015, 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.
- 3.11 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 both Parties.
- 3.12 This AGREEMENT shall be governed by the laws of the State of California. Any action or proceeding between COLLEGE 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.
- 3.13 Time is of the essence for each and every provision of this AGREEMENT.
- 3.14 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.
- 3.15 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, estoppel or otherwise.
- 3.16 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.
- 3.17 This AGREEMENT may be signed in counterparts, each of which shall constitute an original.
- 3.18 This AGREEMENT shall become effective on the date it is executed by all Parties.
- 3.19 The recitals are incorporated into the body of this AGREEMENT.
- 3.20 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.

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

VICTOR VALLEY COLLEGE

By: [Signature]

(Authorized signature - sign in blue ink)

Name: DELLIS HENDERSON

(Print or type name of person signing contract)

Title: Chair, Board of Trustees

Dated: 2-11-14

Address: Address: 18422 Bear Valley Rd, Victorville, CA 92395

Phone: (760) 245-4271

APPROVED AS TO FORM AND PROCEDURE:

By _____

Victor Valley College Attorney

Dated: _____

TOWN OF APPLE VALLEY

By: _____

(Authorized signature - sign in blue ink)

Name: _____

(Print or type name of person signing contract)

Title: Mayor, Town Council

Dated: _____

Address: 14955 Dale Evans Parkway

Apple Valley, CA 92307

Phone: (760) 240-7000

APPROVED AS TO FORM AND PROCEDURE:

By _____

APPLE VALLEY, Town Attorney

Dated: _____

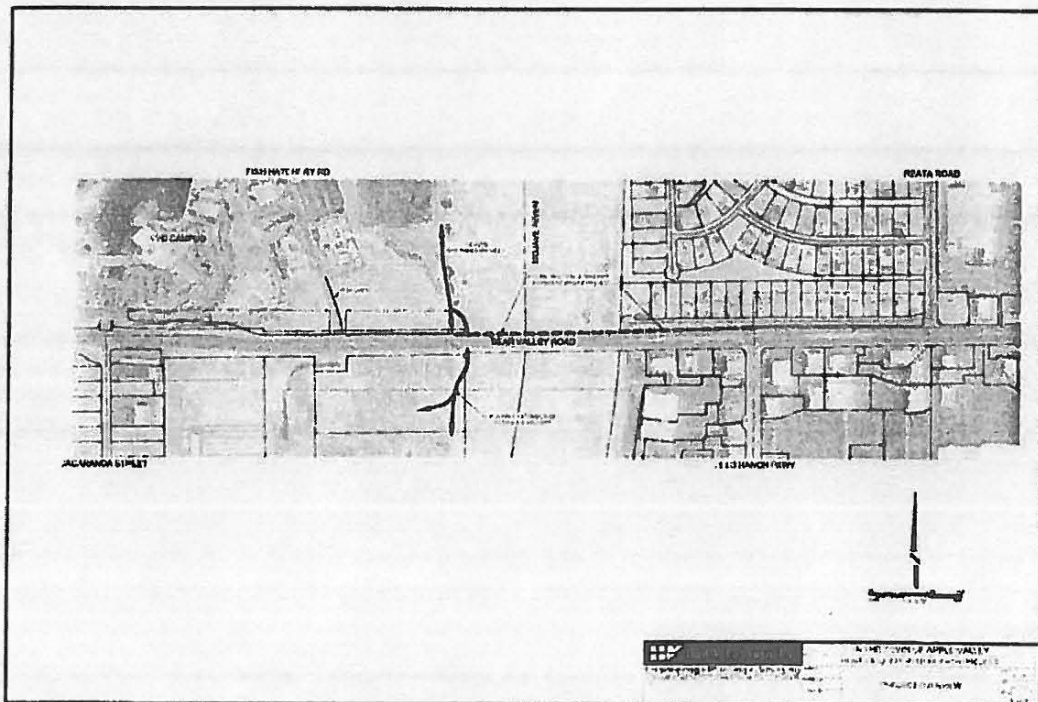
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ATTACHMENT A

Project Description and Proposed Improvements Bear Valley Road Bike Path Project

The Project consists of the construction of a new Class I bike path along the north side of Bear Valley Road from the Mojave River Bridge at the easterly property of the Victor Valley Community College (VVC) to the upper campus, connecting at Jacaranda Street. And on the east side of Mojave Fish Hatchery Road from Bear Valley Road to Jacaranda Street. Items of work include, but are not limited to, pavement construction, crib block walls, ribbon gutters, drainage pipes and related structures, striping, signage, and other work as shown on the approved construction plans, including approved contract change orders, etc.

CONSTRUCTION Start: June 2014
CONSTRUCTION End: August 2014



ATTACHMENT "B"



March 16, 2011

Mr. Richard Pedersen, P.E.
Deputy Town Engineer
Town of Apple Valley
14055 Dale Evans Parkway
Apple Valley, CA 92307

To Whom It May Concern:

Victor Valley College
18422 Bear Valley Road
Victorville, CA 92385-5850
(760) 245-4271 x2350
oheamc@vvc.edu

Christopher C. O'Hearn, Ph.D.
Interim Superintendent /
President

Board of Trustees
Denise Henderson, President
Joe Range, Vice President
Lorrie Danson, Clerk
Michael Krause, Trustee
Joseph W. Brady, Trustee

Victor Valley Community College supports every effort to make bicycling a safe, accessible activity in our region. The proposed Class 1 bike path along the north side of Bear Valley Road from the existing Class 1 bike path at the intersection of Apple Valley Road and Bear Valley Road to the Victor Valley College will not only encourage a healthier life style for Victor Valley residents but will also increase safety and access in this location.

There are gaps in connectivity currently facing Apple Valley residents when they consider riding their bikes to work, commercial destinations and to the region's only college located in Victorville. This project will resolve the connectivity issue between Apple Valley and the Victor Valley College and could potentially increase the interest in biking to this newly accessible destination.

Finally, with the elevated public interest in active transportation, this project is ideal to help the Victor Valley become a region leader in the sustainable community movement and the emerging green economy which the college fully supports. Not only is non-motorized transportation good for the environment, it is better for the health and well being of our residents.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher O'Hearn".

Christopher O'Hearn, Ph.D.
Superintendent/President

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ATTACHMENT "C"



San Bernardino Associated Governments

1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
Phone: (909) 884-8276 Fax: (909) 885-4437 Web: www.sanbag.org



- San Bernardino County Transportation Commission
- San Bernardino County Transportation Authority
- San Bernardino County Congestion Management Agency
- Service Authority for Freeway Emergencies

December 19, 2011

Mr. Richard Pedersen
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Dear Mr. Pedersen:

Congratulations, it is our pleasure to inform you that the San Bernardino Associated Governments (SANBAG) Board of Directors approves funding from the Transportation Development Act (TDA), Article 3 Pedestrian and Bicycle Program, for your Bear Valley Road Bike Path Project in the amount of \$386,370.

The TDA, Article 3 award is considered a grant, and is paid through a reimbursement process, upon completion of the project and the filing of a TDA claim, including proper documentation of project expenditure. However for projects over \$200,000, SANBAG will allow program payments up to 80% of the award. Upon completion of the project the remaining 20% will be released. The receipt of TDA Article 3 funds requires an independent audit of the project.

The award is for a maximum reimbursable amount. Should your project exceed the maximum reimbursable amount, SANBAG will not provide any additional reimbursement. For projects completed under the awarded amount, SANBAG will reimburse your agency for the LTP share of the project using the match percentage identified in your grant application. When your project is complete please contact SANBAG for the TDA Claim Form and filing instructions.

The SANBAG Board also set the period of time for completion of your project to three years. The project funded under this letter of award must be completed by December 31, 2014.

Again, congratulations on being successful with your candidate project. We look forward to the rapid implementation of your project. Should you have any questions please contact me at (909) 884-8276 or rgraham@sanbag.ca.gov.

Sincerely,

Ryna Graham
Transit Analyst

cc: Frank W. Robinson, Town Manager
Brad Miller, Town Engineer

cc: Billie Team

Cities of Anaheim, Brea, Buena Vista, Chino, Chino Hills, Claremont, Fontana, Fullerton, Garden Grove, Huntington Beach, Industry, Irvine, Laguna Hills, Laguna Niguel, Laguna Woods, Mariposa, Redlands, Rialto, San Juan Capistrano, San Dimas, San Gabriel, San Marino, San Bernardino, San Gabriel, San Jacinto, San Jose, San Luis Obispo, San Marcos, San Ramon, San Tan Valley, San Ysidro, San Bernardino, San Gabriel, San Jacinto, San Jose, San Luis Obispo, San Marcos, San Ramon, San Tan Valley, San Ysidro, San Bernardino

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**Victor Valley College - Administrative Services
Contract/Agreement Review/Approval Request Form**

Department: Facilities Construction Date Submitted: 01/16/14

Vendor Name: Town of Apple Valley

Brief Description: Bike Path

(please state in description if contract is new or a renewal)

Contract Amount: None

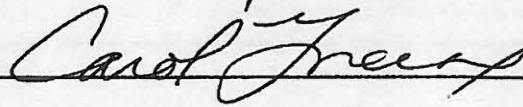
If contract does not require County Counsel review please state why: _____

(Administrative Services Departments complete top portion only)

(This section to be completed by County Counsel)

Date To County Counsel for Review: _____

County Counsel Review/Approval: N/A Yes No Date Approved: 1/23/14

County Counsel Signature: 

Date to Supt./President for Signature (if applicable): _____

Date to Board for Approval or Ratification: _____

(Created 4/16/07)