



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** January 27, 2015

From: Brad Miller, Town Engineer **Item No:** 9
Engineering Department

Subject: APPROVE AND AUTHORIZE A CONSTRUCTION FUNDING AGREEMENT WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG), FOR YUCCA LOMA ROAD WIDENING IN CONJUNCTION WITH THE YUCCA LOMA BRIDGE OVER THE MOJAVE RIVER

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

RECOMMENDED ACTION:

That the Town Council approve the Construction Funding Agreement with San Bernardino Associated Governments (SANBAG), for Yucca Loma 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, the Yucca Loma Bridge and Yates Road Widening are under construction. In connection with the construction of the new Yucca Loma Bridge over the Mojave River, and the widening of Yates Road in San Bernardino County, Phase 2 roadway improvements are scheduled to begin along Yucca Loma Road between the Yucca Loma Bridge and Apple Valley Road. In preparation for the commencement of this major component of the Yucca Loma / Yates Road / Green Tree Blvd Transportation Corridor, a Construction Funding Agreement has been prepared between the Town of Apple Valley and SANBAG to formalize the construction responsibilities and funding commitments between the two (2) 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 Funding Agreement enabling the Town of Apple Valley to serve as lead agency for construction of the Yucca Loma Road Widening that is required in connection with the Yucca Loma Bridge. The Agreement also defines the funding responsibility of SANBAG to reimburse the Town of Apple Valley for qualifying construction costs.

FISCAL IMPACT:

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

ATTACHMENT:

Construction Funding Agreement with San Bernardino Associated Governments, (SANBAG), for Construction along Yucca Loma Road in conjunction with the Yucca Loma Bridge over the Mojave River.

VICINITY MAP:



PROJECT FUNDING AGREEMENT NO. 15-1001116

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

TOWN OF APPLE VALLEY

FOR

**THE YUCCA LOMA ROAD PROJECT
IN THE TOWN OF APPLE VALLEY**

THIS Project Funding Agreement (“Agreement”) is made and entered into this ____ day of _____ by and between the San Bernardino County Transportation Authority (hereinafter referred to as “AUTHORITY”) and the TOWN OF APPLE VALLEY (hereinafter referred to as “TOWN”). AUTHORITY and TOWN shall be individually or collectively, as applicable, known as “Party” or “Parties.”

RECITALS

- A. The Measure I 2010-2040 Expenditure Plan and the Victor Valley Subarea transportation planning partners have identified projects eligible for partial funding from Measure I 2010-2040 Victor Valley Subarea Major Local Highway Program (“MLHP”) funds; and
- B. AUTHORITY prepared a study referenced herein as the Nexus Study dated November 2, 2011, and, in accordance with the Measure I 2010-2040 Expenditure Plan, that identified for projects located in TOWN the AUTHORITY Public Share as 45% and the TOWN Developer Share as 55%; and
- C. The Yucca Loma Road Project in the Town of Apple Valley (“PROJECT”) is one of the projects identified as eligible for such funding and is described more fully in Attachment A; and
- D. TOWN identified a need of \$3,597,480 to complete construction of the PROJECT; and
- E. The Victor Valley Subarea transportation planning partners have identified this PROJECT as eligible for partial funding in an amount up to \$3,597,480 from Measure I 2010-2040 MLHP funds for the PROJECT; and

F. On January 7, 2015, AUTHORITY's Board of Directors approved allocation of \$3,597,480 in Victor Valley Subarea MLHP funds for the PROJECT; and

G. This Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan including the use of Development Impact Fees by TOWN to pay its share of PROJECT costs; and;

H. Parties desire to proceed with the PROJECT in a timely manner; and

I. This Agreement is intended to delineate the duties and funding responsibilities of the Parties for the PROJECT; and

J. AUTHORITY and TOWN are entering into this Agreement with the understanding that AUTHORITY will reimburse TOWN for eligible PROJECT expenditures with MLHP funds.

NOW, THEREFORE, AUTHORITY and TOWN agree to the following:

SECTION I

AUTHORITY AGREES:

1. To reimburse TOWN for the actual cost of the PROJECT up to a maximum of \$3,597,480 in MLHP funds. An estimate of costs for the PROJECT is provided in Attachment B. AUTHORITY shall have no further responsibilities to provide any funding for PROJECT exceeding this amount without an amendment to this agreement.
2. To reimburse TOWN within 30 days after TOWN submits an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by TOWN up to a maximum of \$3,597,480, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to AUTHORITY as frequently as monthly.
3. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of TOWN performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to AUTHORITY when planning and conducting additional audits.
4. To assign a project liaison for the purpose of attending Project Development Team (PDT) meetings.

SECTION II

TOWN AGREES:

1. To be the lead agency for this PROJECT and to diligently undertake and complete in a timely manner the Scope of Work for the PROJECT as shown in Attachment A.
2. To be responsible for all project costs in excess of \$3,597,480 in MLHP funds absent approval of an additional allocation from the AUTHORITY Board of Directors.
3. To be responsible for expending that portion of the eligible PROJECT expenses, subject to reimbursement by AUTHORITY hereunder, for an amount not to exceed \$3,597,480 in MLHP Funds. Expenses relative to time spent on the PROJECT by TOWN are considered eligible PROJECT expenses and may be charged to the PROJECT funds subject to AUTHORITY's guidelines.
4. To abide by all applicable Federal, State and Local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this Agreement.
5. To prepare and submit to AUTHORITY an original and two copies of signed invoices for reimbursement of eligible PROJECT expenses. Invoices may be submitted to AUTHORITY as frequently as monthly.
6. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to AUTHORITY or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of AUTHORITY during normal business hours at TOWN's TOWN Hall. Copies will be made and furnished by TOWN upon written request by AUTHORITY.
7. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support TOWN's requests for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by TOWN.
8. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Final Report of Expenditures and final invoice no later than 120 days following the completion of the PROJECT work funded under this Agreement. An original and two copies of the Final Report of Expenditures shall be submitted to AUTHORITY and must state that these PROJECT funds were used in

conformance with this Agreement and for those PROJECT-specific work activities described.

9. To cooperate in having a PROJECT-specific audit completed by AUTHORITY, at AUTHORITY's option and expense, upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.
10. To repay to AUTHORITY any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within one hundred twenty (120) days of TOWN receiving notice of audit findings, which time shall include an opportunity for TOWN to respond to and/or resolve the findings. Should the findings not be otherwise resolved and TOWN fail to reimburse moneys due AUTHORITY within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both Parties, the AUTHORITY reserves the right to withhold future payments due TOWN from any source under AUTHORITY's control.
11. To include AUTHORITY in Project Development Team (PDT) meetings if and when such meetings are held and in related communications on PROJECT progress, to provide at least quarterly schedule updates to AUTHORITY, and to consult with AUTHORITY on critical issues relative to the PROJECT.
12. As an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of AUTHORITY and TOWN.

SECTION III

IT IS MUTUALLY AGREED:

1. To abide by all applicable Federal, State and Local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this Agreement.
2. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional eligible costs resulting from unforeseen conditions over the estimated total of the PROJECT cost, shall be borne by TOWN unless prior authorization has been approved by the AUTHORITY Board of Directors pursuant to Section III, Paragraph 3 of this Agreement.
3. In the event TOWN determines PROJECT work may exceed the not to exceed amount identified in Section I, Paragraph 1, TOWN shall inform AUTHORITY of this determination and thereafter the Parties shall work together in an attempt to agree upon an amendment to the PROJECT amounts identified in this Agreement. In no event, however, shall AUTHORITY be responsible for PROJECT costs in excess of

the PROJECT amounts identified herein absent a written amendment to this Agreement that is approved by the Parties.

4. Eligible PROJECT reimbursements shall include only those costs incurred by TOWN for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.
5. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, TOWN shall fully defend, indemnify and save harmless AUTHORITY, its officers and employees 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 TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this Agreement. TOWN's indemnification obligation applies to AUTHORITY's "active" as well as "passive" negligence but does not apply to AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
6. Neither TOWN nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless TOWN, its officers and employees 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 under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. AUTHORITY's indemnification obligation applies to TOWN's "active" as well as "passive" negligence but does not apply to TOWN's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
7. This Agreement will be considered terminated upon reimbursement of all eligible costs by AUTHORITY or June 30, 2017, whichever is sooner, provided that the provisions of Paragraphs 6, 7, 8, 9 and 10 of Section II, and Paragraphs 5 and 6 of Section III, shall survive the termination of this Agreement. The Agreement may also be terminated by AUTHORITY, in its sole discretion, in the event the PROJECT work described in Attachment A has not been initiated or let by TOWN within twelve (12) months of the Effective Date of this Agreement.
8. After providing notice and an opportunity to cure, as further set forth herein, AUTHORITY may terminate this Agreement if TOWN fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein. If a breach is curable, prior to any such

termination, AUTHORITY shall provide TOWN written notice of default, and allow TOWN thirty (30) days opportunity to cure any breach prior to termination. If a breach is capable of cure but, by its nature, cannot be cured within thirty (30) days, such additional period of time shall be allowed as may be reasonably necessary to cure the breach so long as the TOWN commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

9. The failure of performance by either Party hereunder shall not be deemed to be a default where delays or defaults are due to the following force majeure events: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); provided that such force majeure events are beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such force majeure event shall be for the period of the forced delay and shall commence to run from the time of the commencement of the force majeure event, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the force majeure event. Times of performance under this Agreement may also be extended in writing by mutual agreement between the Parties, provided that the term of this Agreement may be extended only by a duly authorized written amendment to this Agreement.
10. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.
11. Attachment A, The Yucca Loma Road Project, (Description of Project and Milestones), and Attachment B, The Yucca Loma Road Project (Summary of Estimated Costs), are attached to and incorporated into this Agreement.
12. This Agreement is effective and shall be dated on the date executed by AUTHORITY.

[Signatures on following page]

**SIGNATURE PAGE
TO
PROJECT FUNDING AGREEMENT NO. 15-1001116**

In witness whereof, the Parties have executed this Agreement by their authorized signatories below.

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY TOWN OF APPLE VALLEY**

By: _____
L. Dennis Michael, President
Board of Directors

By: _____
Larry Cusack
Mayor

Date: _____

Date: _____

APPROVED AS TO FORM AND
PROCEDURE:

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Eileen Monaghan Teichert
AUTHORITY General Counsel

By: _____
John Brown
TOWN Counsel

Date: _____

By: _____
Jeffery Hill
Procurement Manager

Date: _____

Attachment A

YUCCA LOMA ROAD PROJECT Description of Project and Milestones

Project Title			
YUCCA LOMA ROAD PROJECT			
Location, Project Limits, Description, Scope of Work, Legislative Description			
In Apple Valley, from Western Terminus of Yucca Loma Road to Apple Valley Road, widen from 2 to 4 lanes			
Component	Implementing Agency	Reimbursements	
PA&ED	TOWN OF APPLE VALLEY		
PS&E	TOWN OF APPLE VALLEY		
Right of Way	TOWN OF APPLE VALLEY		
Construction	TOWN OF APPLE VALLEY		
Legislative Districts			
	Assembly: 33	Senate:	21
	Congressional: 8		
Purpose and Need			
<p>The purpose and intent of the project is to create an additional east/west corridor through the Victor Valley. This project is a component of the larger Yucca Loma Corridor (the four individual projects are: Green Tree Blvd., Yates Road, Yucca Loma Bridge, and Yucca Loma Road) that ties the Town of Apple Valley to the City of Victorville and the La Mesa/Nisqualli Road Interchange.</p>			
Project Benefits			
<p>The benefits of the new corridor are region wide, and serve anyone who drives, works, or operates a business in the Victor Valley. The benefit of this project is traffic congestion relief, and traffic congestion affects nearly everyone, but perhaps especially those residents and business owners in Victorville who must endure it on a daily basis. The residents of Apple Valley and Spring Valley Lake are obviously going to benefit from this new east-west connection.</p>			
Project Milestone			Proposed
Project Study Report Approved			N/A
Begin Environmental (PA&ED) Phase			10/1/2007
Circulate Draft Environmental Document	Document Type	N/A	2/10/2007
Draft Project Report			N/A
End Environmental Phase (PA&ED Milestone)			1/7/2011
Begin Design (PS&E) Phase			1/10/2011
End Design Phase (Ready to List for Advertisement Milestone)			2/10/2015
Begin Right of Way Phase			2/1/2014
End Right of Way Phase (Right of Way Certification Milestone)			12/12/2014
Begin Construction Phase (Contract Award Milestone)			4/20/2015
End Construction Phase (Construction Contract Acceptance Milestone)			2/12/2016
Begin Closeout Phase			2/15/2016
End Closeout Phase (Closeout Report)			4/15/2016

ATTACHMENT B

**YUCCA LOMA ROAD PROJECT
TOWN OF APPLE VALLEY**

Summary of Estimated Costs

Component	Total Cost	AUTHORITY Share (1)	TOWN Share	SAFE ROUTES TO SCHOOL Grant Funds	COUNTY (2) Storm Drain Funds	FEDERAL Demo Funds
Construction & Construction Mgt.	\$ 13,294,400.00	\$ 3,597,480.00	\$ 4,396,920.00	\$1,100,000	\$ 3,450,000.00	\$ 750,000.00
Total	\$ 13,294,400.00	\$ 3,597,480.00	\$ 4,396,920.00	\$ 1,100,000.00	\$ 3,450,000.00	\$ 750,000.00

(1) AUTHORITY's Share can be from sources under control of AUTHORITY including but not limited to Measure I Major/Local Highways program, State Transportation Improvement Program (STIP), Surface Transportation Program (STP), or other funds without necessitating an amendment of this agreement.

(2) The COUNTY Flood Control Funds are for specific bid items related to the flood control work.