



Town Council Agenda Report

Date: March 12, 2019 Item No. 6

To: Honorable Mayor and Town Council

Subject: ROW CAPITAL FUNDING AGREEMENT FOR THE YUCCA LOMA CORRIDOR PROJECT.

From: Douglas Robertson, Town Manager

Submitted by: Brad Miller, Town Engineer
Engineering Department

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve Right-of-Way Capital Funding Agreement, between the County of San Bernardino and the Town of Apple Valley, for the Yucca Loma Corridor Project, subject to approval as to form by the Town Attorney.

SUMMARY:

The Town previously entered into an agreement with the County of San Bernardino, County Contract No. 11-238 and Amendments No. 1 and No. 2, for the design and right-of-way phases of the Yucca Loma Corridor Project. The purpose of the current agreement is to provide funding for the reimbursement to the Town for the County's share of right-of-way capital costs necessitated for the project.

BACKGROUND:

In April 2011, the Town of Apple Valley entered into an agreement with the County of San Bernardino, County contract No. 11-238, for the design and right-of-way phases of the Yucca Loma Corridor Project. The agreement (Final Design Agreement) was later amended twice through Amendment No. 1 and Amendment No. 2.

The construction phase of the project was completed in September 2016. The Restoration Area monitoring and maintenance phase is currently ongoing and expected to be completed by December 2021.

In the Final Design Agreement, the Town and the County agreed to, at a later date, enter into a separate agreement for the reimbursement to the Town for the County's share of the right-of-way capital costs necessitated for the project, in an amount not to exceed \$280,000.

The project's right-of-way phase has been completed and the total cost was \$347,391. The Town's share is \$127,318.80 (36.65%) and the County's share is \$220,072.20 (63.35%). The Town has prepared and submitted a first and final invoice to the County for their share of the ROW Capital costs. The current agreement will provide the County funds to reimburse the Town.

FISCAL IMPACT:

The Town will be reimbursed a total of \$ 220,072.20 upon execution of this agreement.

ATTACHMENTS:

1. Right-of-Way Capital Funding Agreement.



Contract Number

SAP Number

Public Works – Transportation Planning

Department Contract Representative	Sundaramoorthy (Sri) Srirajan, P.E. Chief
Telephone Number	387-8166
Contractor	Town of Apple Valley
Contractor Representative	Brad Miller, Town Engineer
Telephone Number	(760) 240-7000
Contract Term	3/19/19 – 2/28/2020
Original Contract Amount	\$220,072.20
Amendment Amount	N/A
Total Contract Amount	\$220,072.20
Cost Center	6650002000 / 52002445 / H14218

RECITALS

WHEREAS, the County of San Bernardino (hereinafter referred to as "COUNTY") and the Town of Apple Valley (hereinafter referred to as "APPLE VALLEY"), COUNTY and APPLE VALLEY are also each referred to herein as "Party" and collectively referred to herein as "Parties", previously entered into an agreement, County Contract No. 11-238 and Amendment No. 1 and Amendment No. 2 (hereinafter referred to as "the Final Design Agreement") for the design and right-of-way phases of the Yucca Loma Corridor Project (Project); and

WHEREAS, the Project consisted of the extension and widening from 2 to 4 lanes on Yucca Loma Road and Yates Road, between Apple Valley Road and Ridgecrest Road, and construction of a new bridge on Yucca Loma Road that crosses over the Mojave River; and

WHEREAS, the construction phase of the Project was completed in September 2016, and the Project is currently in the plant restoration phase, which is due to close out in December 2021; and

WHEREAS, in the Final Design Agreement, the Parties agreed that at a later date, the Parties would enter into a separate agreement for the reimbursement to APPLE VALLEY for the COUNTY's share of right-of-way capital costs necessitated for the Project; and

WHEREAS, pursuant to the Final Design Agreement, it was anticipated that the COUNTY's share of Right-of-Way (ROW) Capital costs would not exceed \$280,000; and

WHEREAS, the Parties wish to enter into this ROW Capital Funding Agreement as a required provision in the Final Design Agreement; and

WHEREAS, Resolution No. 2013-202, adopted by the COUNTY's Board of Supervisors on September 17, 2013 (Item No. 2), authorized COUNTY Real Estate Services Department to acquire Assessor's Parcel Number (APN) 0480-031-03, and portions of APN 0480-021-32 and APN 0479-131-07; and

WHEREAS, all Project ROW has been acquired, and all Project ROW Capital costs have been determined; and

WHEREAS, the total Project ROW Capital cost is \$347,391; and

WHEREAS, APPLE VALLEY's share of Project ROW Capital cost is \$127,318.80 (36.65%) and COUNTY's share of Project ROW Capital cost is \$220,072.20 (63.35%), based on acquisition location; and

WHEREAS, APPLE VALLEY has prepared and submitted a final invoice to COUNTY for COUNTY's share of the Project ROW Capital costs (\$220,072.20); and

WHEREAS, in the Final Design Agreement the Parties anticipated that the COUNTY's share of ROW Capital costs would be paid from development mitigation fees collected in the COUNTY's Regional Transportation Development Mitigation Plan (RTDMP), Victorville Sphere-Arterial Road Subaccount; and

WHEREAS, currently there is not sufficient funding in the RTDMP Victorville Sphere Arterial Road Subaccount to reimburse APPLE VALLEY the COUNTY's share of Project ROW Capital cost; and

WHEREAS, the COUNTY's share of ROW Capital costs may be paid for using COUNTY's Gas Tax funds; and

WHEREAS, APPLE VALLEY does not desire to wait for reimbursement from COUNTY's RTDMP Victorville Sphere Arterial Road Subaccount fees and COUNTY is willing to reimburse APPLE VALLEY out of COUNTY's Gas Tax funds, followed by COUNTY reimbursing said funds with RTDMP Victorville Sphere Arterial Road Subaccount fees collected.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 APPLE VALLEY AGREES TO:

1.1 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.

2.0 COUNTY AGREES TO:

2.1 Upon execution of this Agreement to reimburse APPLE VALLEY \$220,072.20 for COUNTY's share of the Project ROW Capital costs.

2.2 No interest is due on outstanding COUNTY share of reimbursable expenditures.

3.0 IT IS MUTUALLY AGREED:

3.1 This Agreement shall terminate upon final payment by COUNTY (not-to-exceed \$220,072.20) for ROW Capital costs, or on February 28, 2020, whichever occurs first.

3.2 This Agreement contains the entire Agreement of the Parties with respect to 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.

3.3 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between APPLE VALLEY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this

Agreement or the Project, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California. In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own costs, including attorney's fees.

- 3.4 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 or against any Party. Any term referencing time, days or period for performance shall be deemed COUNTY 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.
- 3.5 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.
- 3.6 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.
- 3.7 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.8 The Recitals are incorporated into the body of this Agreement.
- 3.9 This Agreement will be effective on the date it is signed by both Parties.

COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY

(Print or type name of corporation, company, contractor, etc.)

▶

 Curt Hagman, Chairman, Board of Supervisors

By _____
(Authorized signature - sign in blue ink)

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

Name _____
(Print or type name of person signing contract)

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

Title _____
(Print or Type)

By _____
 Deputy

Dated: _____

Address 14955 Dale Evans Parkway

 Apple Valley, CA 92307

FOR COUNTY USE ONLY

Approved as to Legal Form

 ▶ Scott M. Runyan, Deputy County Counsel
 Date _____

Reviewed for Contract Compliance

 ▶ Mohammed Ali, P.E., Chief
 Date _____

Reviewed/Approved by Department

 ▶ Kevin Blakeslee, Director
 Date _____