

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

ACCEPT AND APPROVE AGREEMENT REACHED WITH PROPERTY OWNERS FOR ACQUISITION OF ROAD RIGHT-OF-WAY AND CONSTRUCTION EASEMENTS FOR THE YUCCA LOMA ROAD/ YATES ROAD/ GREEN TREE BLVD., CORRIDOR PROJECT.

Summary Statement:

The Yucca Loma Road/ Yates Road/ Green Tree Blvd., Corridor Project (Project) requires acquisition of additional permanent right-of-way and temporary construction easements on private property owned by Mr. and Mrs. Danilo R. Manela. An appraisal has been performed to establish Fair Market Value for acquiring the required right-of-way and construction easements from Mr. and Mrs. Manela.

In accordance with the established Fair Market Value, the Town offers to acquire the required property interests from Mr. and Mrs. Manela for the total price of Thirteen Thousand Three Hundred Dollars (\$13,300.00) to be paid in cash into an escrow. The nature and extent of the interests required are more specifically described and shown in the attached Agreement of Purchase and Sale and Escrow Instructions.

(Continued)

Recommended Action:

Approve and accept the acquisition agreements and authorize the Town Manager, or Town Engineer, to execute the Agreement and proceed with all necessary documents in connection therewith.

Proposed by: Engineering Division _____ **Item Number** _____

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

Please note that the offer is for public right-of-way and easements and that this offer is being made in compliance with Government Code Section 7267.2. The Town has determined that Fair Market Value of Thirteen Thousand Three Hundred Dollars (\$13,300.00) is just compensation based upon an approved appraisal report prepared by an independent licensed real estate appraiser.

An offer to the property owners for the required right-of-way and easements has been accepted and acquisition agreements have recently been signed by the property owners. Staff requests the Council to approve and accept the acquisition documents which are attached for reference, and authorize the Town Manager, or Town Engineer, to sign the Agreement.

PROJECT: *Yucca Loma Bridge Over Mojave River*
APN: 3088-571-14

AGREEMENT
OF PURCHASE AND SALE
AND ESCROW INSTRUCTIONS

This AGREEMENT of Purchase and Sale and Escrow Instructions ("Agreement") is entered into by and between the *Town of Apple Valley* herein called "Buyer" and *Danilo R. Manela and Rosario E. Manela, trustees of the Danilo and Rosario Manela Family Trust, dated September 13, 2007*; herein called "Seller". Seller and Buyer are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

A. Seller owns certain real property located at *13697 Kasanka Trail, Town of Apple Valley, San Bernardino County, California 92307*, bearing Assessor Parcel No. *3088-571-14*.

B. Buyer desires to purchase *Easement Rights for Roadway Purposes and Slope Purposes*, as identified and shown on "Attachment 1" and "Attachment 2" attached hereto and made a part hereof (the "Property") and Seller desires to sell the Property.

C. Buyer desires to purchase a *Temporary Construction Easement* as identified and shown on "Attachment 3", at the agreed upon rental rate, for a period of 18 months.

D. The parties desire by this Agreement to provide the terms and conditions for the purchase and sale of the Property.

AGREEMENT

The parties therefore agree as follows:

1. PURCHASE AND SALE.

Buyer agrees to buy and Seller agrees to sell and convey the Property for the purchase price and upon the terms and conditions set forth in this Agreement.

The total purchase price for the Property shall be the sum ***THIRTEEN THOUSAND THREE HUNDRED DOLLARS, {\$13,300.00}***. The purchase price shall be paid by Buyer to Seller in cash at the Close of Escrow, and includes full compensation for purchase of Easement Rights for said Slope Easement and Roadway Easement purchases, and an Eighteen (18) month Temporary Construction Easement. Buyer shall deposit prior to Close of Escrow the funds required to be deposited by it in order to allow the Escrow to close.

If the Temporary Construction Easement is needed for a duration longer than 18 months but not more than 24 months, an additional monthly rent of ***ONE HUNDRED SEVENTY SIX DOLLARS, {\$176.00}*** shall be paid to Seller by Buyer for each month in

excess of 18 months from the original commencement of the Temporary Construction Easement. If the Temporary Construction Easement is needed for a period exceeding 24 months, Buyer and Seller will renegotiate the terms and agreement of monthly rent, at such warranted time.

2. ESCROW.

Within five (5) days of the execution of this Agreement by all parties, the parties shall open an escrow (the "Escrow") with *CHICAGO TITLE COMPANY* (the "Escrow Holder"), for the purpose of consummating the purchase and sale of the Seller's interest in the Property as described herein. The parties hereto shall execute and deliver to Escrow Holder such escrow instructions prepared by Escrow Holder as may be required to consummate the transaction contemplated by this Agreement.

Escrow instructions shall not conflict with, amend, or supersede any provisions of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control unless the parties expressly agree in writing otherwise. The Escrow Instructions shall include the following terms and conditions of sale:

2.1 Close of Escrow.

Escrow shall close on or before Forty-Five (45) days following the execution of this Agreement (the "Close of Escrow"). If Escrow is not in a condition to close by the Close of Escrow, and the failure to close is due to unforeseen conditions of title or interest of third parties in the Property that cannot be resolved in Escrow, then Buyer may, at its option, request the cancellation of the Escrow and this Agreement and the return of any funds it has deposited into Escrow. Thereupon, all obligations and liabilities of the parties under this Agreement shall cease and terminate. If no such request is made, Escrow shall be closed as soon as possible thereafter. Buyer shall be entitled to sole possession of the Property immediately upon Close of Escrow.

2.2 Condition of Title to Property.

Seller shall cause the conveyance of his interests in the Property to Buyer as evidenced by a CLTA Standard Form Policy or Binder of Title Insurance ("Title Policy") issued by *CHICAGO TITLE COMPANY* (the "Title Company") in an amount equal to the purchase price. The Title Policy shall show as exceptions with respect to the Property only matters approved in writing by Buyer. Notwithstanding the foregoing, any exceptions to title representing monetary liens or encumbrances are hereby disapproved by Buyer, and Escrow Holder is hereby authorized and instructed to cause the reconveyance, partial reconveyance, or subordination, as the case may be, of any such monetary exceptions to Buyer's title to the Property at or prior to the Close of Escrow.

Upon title vesting in Buyer, Seller warrants that there are no unrecorded encumbrances (including but not limited to liens, leases, easements, or licenses) on all or any portion of the Property, and Seller agrees to hold harmless, defend, and reimburse the Buyer for any and all of their losses and expenses, including reasonable attorney fees,

occasioned by reason of any encumbrance on said Property, whether or not known or foreseeable by Seller.

2.3 Permission to Enter on Premises.

Seller hereby grants permission to Buyer and/or its employees, contractors, agents and assigns, to enter upon the Property for the purpose of constructing the Yucca Loma Bridge Project and accomplishing all necessary incidents thereto, provided that any entry into the residence or business of Seller or its tenant(s) shall be preceded by twenty (24) hours written Notice of Intent to Enter delivered to Seller, and no demolition or removal of structures and/or improvements shall commence prior to the vacation of Property.

Buyer agrees to indemnify, save, and hold harmless Seller from and against all claims, demands, costs and expenses, including attorneys' fees, arising out of or relating to such entry and construction by Buyer or its agents.

2.4 Costs of Escrow and Title Policy and Closing Costs.

Buyer shall pay the cost of the Title Policy, the Escrow fees, and all other costs and expenses incurred herein.

2.5 Property Taxes and Assessments.

Because of Buyer's status as a public agency, no documentary transfer tax will be payable with respect to this conveyance, pursuant to California Revenue and Taxation Code Section 11922. Similarly, no recording fees will be payable with respect to the recording of the Easements, pursuant to Government Code Section 27383.

To the extent that Seller has prepaid any taxes or assessments attributable to the Property; Seller shall be solely responsible for obtaining any refund due thereon from the taxing authority. Upon written request, Buyer shall assist Seller, at Seller's sole cost, in obtaining said refund, if any; however, in no case shall Buyer credit or otherwise pay Seller for that refund, if any, through or outside of Escrow.

2.6 Deposit of Funds and Documents.

Prior to Close of Escrow, Buyer shall deposit into Escrow (i) all Escrow and Closing Costs as described above; (ii) the purchase price to be paid to Seller through Escrow; (iii) such other documentation as is necessary to close Escrow.

Prior to the Close of Escrow, Seller shall deposit into Escrow (i) the properly executed Easements, which form is provided in Exhibit C, for conveyance of Seller's interests in the Property to Buyer; and (ii) such other documents and sums, if any, as are necessary to close Escrow in conformance herewith.

2.7 Buyer's Conditions Precedent to Close of Escrow.

The Close of Escrow and the Buyer's obligation to accept title to the Property and the Purchase Price are subject to the following conditions:

(a) All representations and warranties of Seller set forth in this Agreement shall be true and correct as of the date of the Close of Escrow; and

(b) Seller shall timely perform all obligations required by the terms of this Agreement to be performed by them.

2.8 Seller's Conditions Precedent to Close of Escrow.

For the benefit of Seller, the Close of Escrow shall be conditioned upon the timely performance by Buyer of all obligations required by the terms of this Agreement.

3. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller makes the following representations and warranties with respect to the Property, each of which shall survive Close of Escrow:

A. The execution and delivery of this Agreement by Seller, Seller's performance hereunder, and the consummation of the transaction contemplated hereby will not constitute a violation of any order or decree or result in the breach of any contract or agreement to which Seller is at present a party or by which Seller is bound;

B. To Seller's knowledge, no litigation and no governmental, administrative or regulatory act or proceeding regarding the environmental, health and safety aspects of the Property is pending, proposed or threatened;

C. Seller will not enter into any agreements or undertake any new obligations prior to Close of Escrow which will in any way burden, encumber or otherwise affect his interests in the Property without the prior written consent of Buyer;

D. Seller has and shall have paid, before Close of Escrow, Seller's pro rata share of all taxes and assessments levied and assessed against the Property. If not paid prior to Close of Escrow, Seller hereby authorizes Escrow Holder to disburse to the taxing authority, from funds otherwise due to Seller, an amount sufficient to satisfy Seller's pro rata share of said taxes and/or assessments; and

E. Seller shall pay any costs specifically associated with providing clear title to the Property to Buyer, including any and all fees charged by Seller's lender in connection with this transaction. Penalties for prepayment of bona fide obligations secured by any existing deed of trust or mortgage shall be waived pursuant to Civil Code Procedures Section 1265.240.

F. Seller is aware of Seller's obligation under California Health and Safety Code Section 25359.7 to disclose any knowledge which they may have regarding any

release of Hazardous Substances (as defined by applicable federal, state and local statutes, rules and regulations) upon or under the Property. Seller warrants and represents to Buyer that Seller is not aware that any such Hazardous Substances have been generated, stored or disposed of upon or under the Property.

G. The covenants, representations and warranties of Seller under this Section shall be true on and as of the Close of Escrow and shall survive the Close of Escrow. Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and litigation expenses, which Seller may reasonably incur or sustain by reason of or in connection with any misrepresentation made by Seller pursuant to this Section.

H. Seller represents and warrants to Buyer that no broker or finder has been engaged by Seller in connection with the transaction contemplated by this Agreement, or to Seller's knowledge is in any way connected with such transaction. Buyer represents and warrants to Seller that no broker or finder has been engaged by Buyer in connection with the transaction contemplated by this Agreement, or to Buyer's knowledge is in any way connected with such transaction. If any such claims for brokers' or finders' fees or commissions are asserted in connection with the negotiation, execution or consummation of this Agreement, then Buyer shall indemnify, save harmless and defend Seller from and against such claims if they shall be based upon any statement, representation or agreement made by Buyer, and Seller shall indemnify, save harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller. Buyer hereby discloses that Buyer's agent involved in the negotiation and execution of this Agreement (or his or her affiliate or employer) may be a licensed real estate broker or salesperson, but will not receive any brokerage commission in connection with the contemplated transaction.

4. ACKNOWLEDGMENT OF FULL BENEFITS AND RELEASE.

A. By execution of his Agreement, Seller, on behalf of himself, his heirs, executors, administrators, successors and assigns, hereby acknowledges that this Agreement provides full payment for the acquisition of the Property by Buyer, and Seller hereby expressly and unconditionally waives any claim for compensation for injury to the remainder ("severance damages"); precondemnation damages; claims for inverse condemnation; loss of goodwill and/or lost profits; loss or impairment of any "bonus value" attributable to any lease; damage to or loss of improvements pertaining to the realty; damage to or loss of machinery, fixtures, inventory, equipment and/or personal property; any right to repurchase, leaseback from Seller, or receive any financial gain from, the sale of any portion of the Property, or challenge Buyer's adoption of a resolution of necessity, pursuant to Code of Civil Procedure sections 1245.245; any right to receive any notices pursuant to Code of Civil Procedure section 1245.245; any right to enforce any other obligation placed upon Seller pursuant to Code of Civil Procedure sections 1245.245, 1263.025 and 1263.615; any other rights conferred upon Defendants pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025; and attorney's fees and costs. It being understood that this is a complete and full settlement of all acquisition claims, liabilities, or benefits of any type or nature whatsoever relating to or in connection

with the acquisition of the Property by Buyer. This release shall survive the Close of Escrow.

B. This Agreement arose out of Buyer's efforts to acquire the Property through its municipal authority. Seller, on behalf of himself, his heirs, executors, administrators, successors and assigns, hereby fully releases Buyer, its successors, agents, representatives (including attorneys), and assigns, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any damage which has been sustained by Seller, or may be sustained by Seller, as a result of Buyer's efforts to acquire the Property or to construct the works of improvement thereon, or any preliminary steps thereto. This Agreement does not, and shall not be construed to, require Seller to indemnify Buyer for damages which may arise as a result of Buyer's efforts to construct improvements on the Property.

C. Seller hereby acknowledges that he either has consulted with legal counsel, or had an opportunity to consult with legal counsel, regarding the provisions of the California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Seller acknowledges that he may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Seller hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which they may have under California Civil Code Section 1542, or under any statute or common law or equitable principal of similar effect.

This acknowledgment and release shall survive the Close of Escrow.

I HAVE READ AND UNDERSTOOD PARAGRAPH 4C


SELLER'S INITIALS

5. REMEDIES.

In the event of a default under this Agreement by either Seller or Buyer, the rights of the non-defaulting party will be as follows:

5.1 Seller Default.

If Seller defaults under this Agreement, then Buyer may, at Buyer's option, terminate this Agreement and the Escrow or initiate an action for specific performance of this Agreement, in addition to pursuing any other rights or remedies that

Buyer may have at law or in equity. Upon such termination by Buyer, the Seller, as the defaulting party, shall pay all Escrow and Title company termination fees.

5.2 Buyer Default.

If Buyer defaults under this Agreement, then Seller may, at Seller's option, terminate the Escrow or pursue any rights or remedies that Seller may have at law or in equity. Upon such termination by Seller, the Buyer, as the defaulting party, shall pay all Escrow and Title company termination fees.

6. MISCELLANEOUS.

A. Notice. Any notice to be given or other document or documents to be delivered to either party by the other hereunder may be delivered in person or may be deposited in the United States Mail in the State of California, duly registered or certified, with postage prepaid, and addressed as follows:

Seller: *Danilo and Rosario Manela
13697 Kasanka Trail
Apple Valley, CA 92307*

Buyer: *Town of Apple Valley
Brad Miller, Town Engineer
14955 Dale Evans Parkway
Apple Valley, CA 92307*

Any notice or other document sent by registered or certified mail as aforesaid shall be deemed to have been effectively served or delivered at the expiration of twenty-four (24) hours following the deposit of said notice or other document in the United States mail.

B. Time of Essence. Time is of the essence with respect to each and every provision hereof.

C. Assignment. Neither this Agreement, nor any interest herein, shall be assignable by any party without prior written consent of the other parties.

D. Governing Law and Venue. All questions with respect to this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of the State of California. Any and all legal actions sought to enforce this Agreement shall be brought in the courts of the County of *San Bernardino*.

E. Inurement. Subject to the restrictions against assignment as herein contained, this Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.

F. Attorney Fees. In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorney fees and costs.

G. Entire Agreement. This Agreement contains the entire Agreement of the parties hereto, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

H. Additional Documents. All parties hereto agree to execute any and all additional documents and instruments necessary to carry out the terms of this Agreement.

I. No Merger. All warranties, representations, acknowledgments, releases, covenants and obligations contained in this Agreement shall survive delivery and recordation of the Easements.

J. Counterparts. This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

K. Waiver. A waiver of any breach or default or failure to enforce any provision of this Agreement shall not operate as a waiver of a future breach of the same provision or any other provision of this Agreement.

L. Amendment/Modification. The terms of this Agreement may not be modified or amended except by a writing signed by all of the Parties hereto.

M. Severability. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

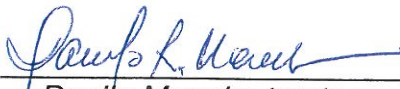
N. No Obligation to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than the Parties.

O. Eminent Domain. The Property is under consideration for a public use. Buyer has the power of eminent domain under California law to acquire property for such use, and Seller acknowledges Buyer may exercise such power if Buyer is unable to acquire the Property pursuant to the terms of this Agreement, whether by reason of a Seller default, failure of condition, or otherwise.

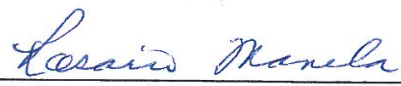
EXECUTED on the date or dates set forth below. This Agreement shall be effective as of the date signed by all parties.

SELLER:

*Danilo and Rosario Manela, Trustees of the
Danilo and Rosario Manela Family Trust, dated
September 13, 2007*

By: 
Danilo Manela, trustee

Date: 04-14-2011

By: 
Rosario Manela, trustee

Date: 4-14-2011

BUYER:

Town of Apple Valley

By: _____

Its:

Date: _____

