

PROJECT FUNDING AGREEMENT NO. 19-1002202

FOR

ROCK SPRINGS BRIDGE OVER MOJAVE RIVER PROJECT

(COUNTY OF SAN BERNARDINO)

THIS Project Funding Agreement (“Agreement”) by and between the San Bernardino County Transportation Authority (hereinafter referred to as “SBCTA”) and the COUNTY OF SAN BERNARDINO (hereinafter referred to as “COUNTY”). SBCTA and COUNTY are each a “Party” or collectively “Parties.”

RECITALS

A. The Measure I 2010-2040 Expenditure Plan and the Victor Valley Subarea transportation planning partners have identified projects eligible for Public Share funding from the Measure I 2010-2040 Victor Valley Subarea Major Local Highway Projects Program (“MLHP”); and

B. SBCTA prepared the Development Mitigation Nexus Study, referenced herein as the Nexus Study, originally approved in October 2005 and regularly updated, most recently on July 11, 2018, that, in accordance with the Measure I 2010-2040 Expenditure Plan, identified for projects located in COUNTY Apple Valley Sphere of Influence, the SBCTA Public Share as 42.8% and the COUNTY Development Share as 57.2%; and

C. The Measure I 2010-2040 Strategic Plan Policy 40013, Victor Valley Major Local Highways Program, includes as Public Share funds: Measure I Major Local Highways, State Transportation Improvement Program, Surface Transportation Program, Congestion Mitigation and Air Quality, State Local Partnership Program, and Local Partnership Program funds; and

D. Rock Springs Bridge over Mojave River Project (“PROJECT”) is one of the projects identified as eligible for such funding and is described more fully in Attachment A; and

E. COUNTY identified a cost of \$20,234,837, which reflects a cost escalation to the mid-construction year of 2021, to complete the engineering, right-of-way and construction phases of the PROJECT, with the right-of-way and construction phases to be funded 88.53% with Federal Highway Bridge Program funds; and

F. The Victor Valley Subarea transportation planning partners have identified this project as eligible for Public Share funding in an amount up to \$1,456,938, or 42.8% of the revised design phase costs and 42.8% of the required 11.47% local match to the Federal Highway Bridge

Program funds and other right-of-way and construction costs, that are not eligible for federal reimbursement, whichever is less; 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 COUNTY to pay the Development Share of PROJECT costs; and

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

NOW, THEREFORE, SBCTA and COUNTY agree to the following:

SECTION I

SBCTA AGREES:

1. To allocate up to a maximum of \$1,456,938 in Public Share funds for the actual cost of the PROJECT, which includes the 42.8% public share of the revised design phase and up to 42.8% of the required 11.47% local match to the Federal Highway Bridge Program funds and other right-of-way and construction costs that are not eligible for federal reimbursement, whichever is less. An estimate of costs for the PROJECT and Public Share fund sources is provided in Attachment B. SBCTA shall have no further responsibilities to provide any funding for the PROJECT exceeding this amount unless a written amendment to this Agreement is signed by both Parties.
2. In the case that Measure I funds are allocated to the Project, to reimburse COUNTY within thirty (30) days after COUNTY submits an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by COUNTY, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to SBCTA 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 COUNTY 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 SBCTA when planning and conducting additional audits.
4. To assign a project liaison for the purpose of attending Project Development Team (PDT) meetings.

SECTION II

COUNTY AGREES:

1. To be the lead agency for 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 expending that portion of allocated Public Share funds on eligible PROJECT expenses in an amount not to exceed \$1,456,938, which includes the 42.8% public share of the revised design phase and up to 42.8% of the required 11.47% local match to the Federal Highway Bridge Program funds and other right of way and construction costs that are not eligible for federal reimbursement, whichever is less, unless this Agreement is amended and approved increasing PROJECT costs. Reimbursement by SBCTA shall be in accordance with Section I, Paragraph 2. Additionally, expenses relative to time spent on the PROJECT by COUNTY staff are considered eligible PROJECT expenses and may be charged to the PROJECT, subject to SBCTA, State, and Federal guidelines.
3. In the case that State and Federal funds are allocated to the PROJECT, to secure all necessary State and Federal authorizations that are required before incurring eligible PROJECT expenditures
4. To abide by all SBCTA, COUNTY, State, and Federal laws, regulations, policies and procedures pertaining to the PROJECT.
5. In the case that Measure I funds are allocated to the PROJECT, to prepare and submit to SBCTA an original and two copies of signed invoices for reimbursement of eligible PROJECT expenses. Invoices may be submitted to SBCTA as frequently as monthly.
6. In the case that State and Federal funds are allocated to the PROJECT, to be responsible for requesting reimbursement through the California Department of Transportation.
7. 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 SBCTA or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SBCTA during normal business hours at COUNTY Department of Public Works. Copies will be made and furnished by COUNTY upon written request by SBCTA.
8. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support COUNTY's requests for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT elements and produce monthly reports which clearly identify reimbursable costs,

matching fund costs, indirect cost allocation, and other allowable expenditures by COUNTY.

9. 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 one hundred twenty (120) days following the completion of those expenditures. An original and two copies of the Final Report of Expenditures shall be submitted to SBCTA and must state that these PROJECT funds were used in conformance with this Agreement and for those PROJECT-specific work activities described.
10. To cooperate in having a PROJECT-specific audit completed by SBCTA, at SBCTA'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.
11. To repay to SBCTA any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within one hundred twenty (120) days of COUNTY receiving notice of audit findings, which time shall include an opportunity for COUNTY to respond to and/or resolve the findings. Should the findings not be otherwise resolved and COUNTY fail to reimburse moneys due SBCTA within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both Parties, SBCTA reserves the right to withhold future payments due COUNTY from any source under SBCTA's control.
12. To include SBCTA in PDT meetings if and when such meetings are held, and in related communications on PROJECT progress, to provide at least quarterly schedule updates to SBCTA, and to consult with SBCTA on critical issues relative to the PROJECT.
13. In the case that Measure I funds are allocated to the PROJECT, 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 SBCTA and COUNTY.
14. To include in all contracts between COUNTY and contractors for the PROJECT the requirement that SBCTA be named as an additional insured under general liability insurance policies maintained by the contractor for the PROJECT.

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 COUNTY unless prior authorization has been approved by the SBCTA Board of Directors pursuant to Section III, Paragraph 3 of this Agreement;
3. In the event COUNTY determines PROJECT costs may exceed the not to exceed amount identified in Section I, Paragraph 1, COUNTY shall inform SBCTA 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 SBCTA be responsible for PROJECT costs in excess of the amounts identified herein absent a written amendment to this Agreement that is approved and signed by the Parties.
4. Eligible PROJECT reimbursements shall include only those costs incurred by COUNTY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.
5. Neither SBCTA 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 COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, COUNTY shall fully defend, indemnify and save harmless SBCTA, 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 COUNTY under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement. COUNTY's indemnification obligation applies to SBCTA's "active" as well as "passive" negligence but does not apply to SBCTA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
6. Neither COUNTY 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 SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA shall fully defend, indemnify and save harmless COUNTY, 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 SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this Agreement. SBCTA's indemnification obligation applies to COUNTY's "active" as well as "passive" negligence but does not apply to COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

7. In the event COUNTY and/or SBCTA is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, COUNTY and/or SBCTA shall indemnify the other to the extent of its comparative fault.
8. This Agreement will be considered terminated upon reimbursement of eligible costs by SBCTA or **December 31, 2024**, whichever is sooner, provided that the provisions of Paragraphs 7, 8, 9, 10, and 11 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 SBCTA, in its sole discretion, in the event the PROJECT described in Attachment A has not been initiated by COUNTY within twelve (12) months of the Effective Date of this Agreement.
9. SBCTA may terminate this Agreement if COUNTY 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.
10. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.
11. Attachment A, Description of Project and Milestones, and Attachment B, Summary of Estimated Costs for PROJECT, are attached to and incorporated into this Agreement.
12. This Agreement may be signed in counterparts, each of which shall constitute an original.
13. This Agreement is effective and shall be dated on the date executed by SBCTA.

---SIGNATURES ON NEXT PAGE ---

IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized signatories below.

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

COUNTY OF SAN BERNARDINO

By: _____
Darcy McNaboe, President
Board of Directors

By: _____
Curt Hagman, Chairman
Board of Supervisors

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM:
MICHELLE BLAKEMORE, County Counsel

By: _____
Julianna K. Tillquist
SBCTA General Counsel

By: _____
Suzanne Bryant
Deputy County Counsel

Date: _____

By: _____
Jeffery Hill
Procurement Manager

Date: _____

Attachment A

ROCK SPRINGS BRIDGE OVER MOJAVE RIVER PROJECT

Description of Project and MilestonesProject Title			
ROCK SPRINGS BRIDGE OVER MOJAVE RIVER PROJECT			
Location, Project Limits, Description, Scope of Work, Legislative Description			
The project is to replace the existing low-water crossing across the Mojave River on Rock Springs Road with a new bridge.			
Component	Implementing Agency		Reimbursements
PA&ED	County of San Bernardino		No
PS&E	County of San Bernardino		Yes
Right of Way	County of San Bernardino		Yes
Construction	County of San Bernardino		Yes
Legislative Districts			
Assembly:	33	Senate:	21
Congressional:	8		
Purpose and Need			
This bridge is part of a major circulation link in the high desert between the Town of Apple Valley and the City of Hesperia, with approximately 12,939 vehicles per day using the roadway. Additionally, many residents of the Town of Apple Valley and the County unincorporated areas to the east of the Mojave River utilize this road for commuting to work in Riverside, San Bernardino, Orange and Los Angeles counties. Storm water runoff during large weather events overtops the existing three section box culvert, making it necessary to close the road multiple times each year. Road closures result in as much as a 13 mile detour for travel and result in emergency response delays. The nearest alternative river crossing is approximately four miles to the north. A larger bridge is needed to replace the existing low-water crossing across.			
Project Benefits			
This project will eliminate significant delays created by road closures due to storm events.			
Project Milestone			Proposed
Project Study Report Approved			N/A
Begin Environmental (PA&ED) Phase			September 2010
Circulate Draft Environmental Document	Document Type	MND/CE	
Draft Project Report			
End Environmental Phase (PA&ED Milestone)			June 2015
Begin Design (PS&E) Phase			July 2019
End Design Phase (Ready to List for Advertisement Milestone)			March 2021
Begin Right of Way Phase			December 2019
End Right of Way Phase (Right of Way Certification Milestone)			December 2020
Begin Construction Phase (Contract Award Milestone)			June 2021
End Construction Phase (Construction Contract Acceptance Milestone)			December 2022
Begin Closeout Phase			June 2023
End Closeout Phase (Closeout Report)			December 2023

ATTACHMENT B

ROCK SPRINGS BRIDGE OVER MOJAVE RIVER PROJECT

Summary of Estimated Costs

Phase	Total Cost (including federally ineligible project costs)	Federal Highway Bridge Program (HBP) Funds	SBCTA MLHP Funds*	County Funds
PA/ED	\$1,432,789	\$0	\$0	\$1,432,789
PS&E	\$572,000	\$0	\$244,816	\$327,184
ROW	\$520,000	\$460,356	\$25,528	\$34,116
CONSTRUCTION	\$17,710,048	\$14,937,631	\$1,186,594	\$1,585,822
TOTAL	\$20,234,837	\$15,397,987	\$1,456,938	\$3,379,911

*SBCTA'S Share can be from sources under control of SBCTA including but not limited to Measure I Major Local Highway Projects Program (MLHP), State Transportation Improvement Program (STIP), Surface Transportation Program (STP), or other funds without necessitating an amendment of this Agreement. SBCTA shall provide County written notice of any change in source of funds.

Note: SBCTA and County contributions include PROJECT costs not eligible for federal reimbursement under the HBP program. Non-participating costs include construction of a median strip and road approaches to the bridge beyond 200 feet.