



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council

Date: March 13, 2012

From: Brad Miller, Town Engineer
Engineering

Item No: 11

Subject: APPROVE AND AUTHORIZE A FUNDING AGREEMENT WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS, (SANBAG), FOR CONSTRUCTION OF 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 Funding Agreement with San Bernardino Associated Governments for Construction of the Yucca Loma Bridge over the Mojave River, subject to approval as to form by the Town Attorney and as to content by the Town Manager.

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 Final Designs for the Yucca Loma Bridge and the acquisition of the necessary right of way are nearing completion. Construction of the new Yucca Loma Bridge over the Mojave River is scheduled to begin during the summer/fall of 2012. In preparation for the commencement of this major component of the Yucca Loma/ Yates Road / Green Tree Blvd Transportation Corridor, a Funding Agreement has been prepared between the Town of Apple Valley, and the San Bernardino Associated Governments (SANBAG), to formalize the construction funding commitments between the two agencies. The Funding Agreement before Town Council this evening includes a pledge of 45% funding from SANBAG, including STPL Highway Funds, and Measure I Major Local Highway Funds. The Town's pledge for the local match 55% share is from RDA Bond Proceeds originally specified for this Project. RDA Bond Proceeds have already funded the first phase of Bridge construction consisting of Clearing and Tree Removal along the future alignment across the Mojave River.

Attachments

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

FISCAL IMPACT:

If applicable.

CONSTRUCTION FUNDING AGREEMENT NO. C12

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

TOWN OF APPLE VALLEY

FOR

**CONSTRUCTION of the Yucca Loma Bridge, a Mojave River Bridge Crossing
from terminus of Yucca Loma Road to Yates Road,
Town of Apple Valley**

THIS AGREEMENT is made and entered into this ____ day of _____ by and between the San Bernardino County Transportation Authority (hereinafter referred to as "SANBAG") and the Town of Apple Valley (hereinafter referred to as "TOWN").

WITNESSETH

WHEREAS, the Measure I 2010-2040 Expenditure Plan, the SANBAG Nexus Study, and planning conducted by the Victor Valley subarea identified projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, this Construction Funding Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan; and

WHEREAS, SANBAG has determined that this and the construction expenditure phase are included in the SANBAG Nexus Study and is eligible to receive Measure I 2010-2040 Victor Valley Major Local Highway Program (MLHP) funds; and

WHEREAS, TOWN wishes to be the lead agency on the Construction Phase of the Project for the Yucca Loma Bridge, a Mojave River bridge crossing from the terminus of Yucca Loma Road to Yates Road in the Town of Apple Valley (a detailed project description is included as Attachment A); and

WHEREAS, SANBAG and TOWN are entering into this Agreement with the understanding that SANBAG will reimburse TOWN for eligible Construction expenditures with a combination of Measure I 2010-2040 Victor Valley Major Local Highways (MLH) Program funds and Surface Transportation Program – Local (STP-L) funds;

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

SECTION I

SANBAG AGREES:

1. To reimburse TOWN, as provided in Section III, within 30 days after TOWN submits to SANBAG an original and two copies of the signed invoices in the proper form covering those actual allowable Construction expenditures that were incurred by TOWN, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to SANBAG as frequently as monthly.

2. 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 SANBAG when planning and conducting additional audits.

SECTION II

TOWN AGREES:

1. Only eligible Construction-specific work activities, as set forth in Attachment A to this Agreement, that conform to the SANBAG Nexus Study will be eligible for Measure I reimbursement.
2. To prepare and submit to SANBAG an original and two copies of signed invoices for reimbursement of those eligible Construction expenses according to the requirements specified in Attachment B. Invoices may be submitted to SANBAG as frequently as monthly. If an electronic version of the invoice and all supporting documents is available, it may be submitted in lieu of paper copies.
3. To repay to SANBAG any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within ninety (90) days of TOWN receiving notice of audit findings, which time shall include an opportunity for TOWN to respond to and/or resolve the finding. Should the finding not be otherwise resolved and TOWN fails to reimburse moneys due SANBAG within ninety (90) days of audit finding, or within such other period as may be agreed between both parties hereto, the SANBAG Board reserves the right to withhold future payments due TOWN from any source under SANBAG's control.
4. To provide 55% share of total eligible Construction expenses which represents the development share of \$17,138,516.69 as referenced in Attachment B.
5. 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 SANBAG or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SANBAG. Copies will be made and furnished by TOWN upon request,

6. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support TOWN request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of Construction work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by TOWN.
7. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible Construction costs expended for those activities described in the work activities, and to submit that Report and invoice no later than 120 days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to SANBAG, must state that these Construction funds were used in conformance with this Agreement and for those Construction-specific work activities described. If an electronic version of the Final Report of Expenditures and all supporting documents is available, it may be submitted in lieu of paper copies.
8. To have a Construction-specific audit completed by SANBAG, at SANBAG's option, upon completion of the Construction. The audit must state that all funds expended on the Construction were used in conformance with this Agreement.
9. To include SANBAG in Project Development Team (PDT) meetings, if and when such meetings are held, and related communications on Construction progress and to provide at least quarterly schedule updates to SANBAG. SANBAG shall assign a project liaison for the purpose of attending PDT meetings.
10. As an eligible expense, to post signs when the Construction Phase begins at the boundaries of the Project noting that the Construction is funded with Measure I funds. Signs shall bear the logos of SANBAG and Town of Apple Valley.
11. To include SANBAG in any planning of Project ceremonies such as groundbreaking, ribbon cutting, or similar event. Project ceremony programs and CONSTRUCTION signage shall bear the logos of SANBAG and the Town of Apple Valley.

SECTION III

IT IS MUTUALLY AGREED:

1. To abide by all applicable federal, state and local laws and regulations pertaining to the Construction, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the date of execution of this agreement (Attachment C).
2. SANBAG's financial responsibility shall be a maximum of \$15,800,000 composed of \$800,000 in Measure I Major Local Highway funds (MLH) and \$15,000,000 in Surface Transportation Program—Local (STP-L) funds, subject to the provisions of Section III, Paragraphs 3 through 6. An estimate of costs for the Construction is provided in Attachment B.
3. The final Construction cost may ultimately exceed current estimates of Construction cost. Any allocation requests for additional eligible costs resulting from increased bid/ contract prices or change orders arising from unforeseen conditions, including Utility relocation, over the estimated total of the CONSTRUCTION cost of \$31,160,939.44 and the SANBAG allocation of \$15,800,000 must be approved by the SANBAG Board of Directors by an amendment to their agreement.
4. TOWN shall notify SANBAG of the bids/contract received and the amounts thereof. Within ten (10) days thereafter, TOWN and SANBAG shall determine the cost of the Construction.
5. Eligible Construction cost reimbursements shall include only those costs incurred by TOWN for Construction-specific work activities that are described in this Agreement and shall not include escalation or interest.
6. Neither SANBAG 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 SANBAG, 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 SANBAG's "passive" negligence but does not apply to SANBAG's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. TOWN and SANBAG are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

7. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by SANBAG.
8. This Agreement will be considered terminated upon reimbursement of eligible costs by SANBAG. The Agreement may also be terminated by SANBAG, in its sole discretion, in the event the Construction work described in Attachment A has not been initiated or let by TOWN within twelve (12) months of the date of execution of this Agreement.
9. The terms of this Agreement represent the consent of the TOWN to provide the full development share for the Construction required by the SANBAG Nexus Study and that failure to contribute the development share according to the terms of this agreement does not obligate SANBAG to provide supplemental funds or otherwise remedy that failure. SANBAG may terminate this agreement if the TOWN fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the Construction according to the terms herein.
10. Per Measure I Policy VVMLH-12, advanced reimbursements are allowed subject to the following: The amount to be advanced to the local jurisdiction shall not be greater than 10% of the public share of total Construction cost or of three months estimated peak burn rate for the Construction, whichever is less. The advanced reimbursement shall be used to help provide liquidity to the local jurisdiction for payment to the contractor and shall be reconciled at the end of the Construction phase. SANBAG shall reimburse jurisdiction invoices, in addition to the advanced reimbursement amount, until the public share amount remaining in the contract is equivalent to the advanced reimbursement, after which the advanced reimbursement shall satisfy SANBAG reimbursement requirements.

SIGNATURE ON NEXT PAGE

San Bernardino County

Town of Apple Valley

Transportation Authority

By: _____

By: _____

Larry McCallon, President
SANBAG Board of
Directors

Frank Robinson,
Town Manager

Date: _____

Date: _____

APPROVED AS TO FORM AND
PROCEDURE:

APPROVED AS TO FORM AND
PROCEDURE:

By: _____

By: _____

Penny Alexander-Kelley
SANBAG County Counsel

John Brown,
TOWN Attorney

Date: _____

Date: _____

ATTACHMENT A

Project Specific Work Activities

Yucca Loma Bridge Project

The project specific work activities for the bridge construction project include the following major items of work but are not a detailed description of the work. The project plans and specifications are the documents that completely define the work.

Project Description and Proposed Improvements:

Federal Project No.: STPL-5453(011)

Caltrans EA No.: 08-92499L

FTIP ID No.: 200049

Construction Project is located primarily in the Mojave River between the terminus of Yucca Loma Road near Kasanka Trail in the Town of Apple Valley and the terminus of Yates Road in the County of San Bernardino. The Town of Apple Valley is the Lead Agency on the project under a Cooperative Agreement with the County.

Major elements of the Bridge Project include the following:

- Construction of a 13-span, approximately 1600 ft. long by 100 ft. wide bridge
- Construction of approach roadway to the east at Yucca Loma Road
- Construction of approach roadway to the west at Yates Road
- Construction of a new regional storm water outfall and interim drainage facilities
- Bridge lighting

The bridge will be a cast-in-place, prestressed, post-tension concrete box girder, supported on reinforced concrete column bents and seat type abutments and founded on large diameter cast-in-drilled hole deep pile foundations.

Summary of Project Cost (Estimate):

Bridge Construction Items	\$ 25,967,449.60
Contingency (5%)	\$ 1,298,372.40
Construction Management (15%)	<u>\$ 3,895,117.44</u>
Total Construction Cost:	\$ 31,160,939.44

ATTACHMENT B

**CONSTRUCTION of the Yucca Loma Bridge, a Mojave River Bridge Crossing
from terminus of Yucca Loma Road to Yates Road,
Town of Apple Valley**

CONSTRUCTION Scope, Cost, and Schedule

Proposed CONSTRUCTION Work:

CONSTRUCTION of the Yucca Loma Bridge, a Mojave River bridge crossing from terminus of Yucca Loma Road to Yates Road, Town of Apple Valley

Summary of CONSTRUCTION Costs (Estimate):

Total CONSTRUCTION Cost	\$ 31,160,939.44
Total SANBAG Public Share (45%)	\$ 14,022,422.75
Total Town of Apple Valley Development Share (55%)	\$ 17,138,516.69

Proposed CONSTRUCTION Schedule (milestone delivery dates):

CONSTRUCTION Start: November 2012
CONSTRUCTION End: October 2014

ATTACHMENT C

San Bernardino Associated Governments	Policy	40013
Adopted by the Board of Directors	April 1, 2009	Revised
		04/01/09
Victor Valley Major Local Highways (VVMLH) Program Measure I 2010-2040 Strategic Plan		Revision No.
		0

Important Notice: A hardcopy of this document may not be the document currently in effect. The current version is always the version on the SANBAG website.

Note: This notice is only in effect when policy is posted to the SANBAG website.

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Note: This area is used to link to bookmarks inserted in the main paragraph headings.

I. PURPOSE

The purpose of this policy is to establish the requirements for administration of the Victor Valley Major Local Highways Program for Measure I 2010-2040. The policy establishes the fund apportionment and allocation process, the equitable shares for individual jurisdictions, project eligibility, reimbursement mechanisms, limitations on eligible expenditures, and the role of SANBAG. The program will be funded by 25% of the total Measure I 2010-2040 revenue collected in the Victor Valley Subarea. This program will be used by local jurisdictions to fund Major Local Highways projects of benefit to the subarea.

II. REFERENCES

Ordinance No. 04-01 of the San Bernardino County Transportation Authority, Exhibit A – Transportation Expenditure Plan

SANBAG Congestion Management Program

III. DEFINITIONS

Major Local Highways Projects: Major streets and highways serving as primary routes of travel within the subarea, which may include State highways and freeways, where appropriate. These funds may also be used to leverage other state and federal funds for transportation projects and to perform planning/project reports.

Development Share: The percentage share of total project cost assigned as the development contribution percentage as listed in the SANBAG Nexus Study.

Public Share – The share of project cost calculated as the total cost of the project minus the developer share.

Capital Project Needs Analysis (CPNA): A plan of projected local jurisdiction expenditures for the next five years on Major Local Highways eligible for Major Local Highways Program funds, updated annually and submitted to SANBAG by local jurisdictions. The Capital Project Needs Analysis includes anticipated funding sources, funding amounts, project phasing, and availability of development fair share funds.

IV. POLICIES FOR THE VICTOR VALLEY MAJOR LOCAL HIGHWAYS PROGRAM

A. Major Local Highways – Allocation to Eligible Projects

Policy VVMLH-1: The Major Local Highways Program of the Victor Valley Subarea shall be funded from 25% of the Measure I 2010-2040 revenue collected within the subarea. This amount shall be reserved in a special account to be expended on Major Local Highway Projects of benefit to the subarea. Major Local Highway Projects are defined as major streets and highways serving as primary routes of travel within the subarea, which may include State highways and freeways. Where appropriate, Major Local Highway Projects funds can be utilized to leverage other state and federal funds for transportation projects and to perform advance planning/project reports.

Policy VVMLH-2: Victor Valley Major Local Highways funds shall be allocated to each jurisdiction over the 30-year life of the Measure, subject to the qualifications stated in the policies below.

- a. Each jurisdiction shall receive an approximately equivalent share of the total revenue raised by Major Local Highways Program over the life of the Measure, as adjusted to account for the time-value of money, per Policy VVMLH-4 listed below.
- b. If a jurisdiction receives proceeds from a bond sale secured by the Major Local Highways funds, then the portion of the debt service payment attributed to that jurisdiction's projects shall be counted toward that jurisdiction's equitable share percentage.
- c. Allocations shall be made with an objective of allowing projects from each jurisdiction of the subarea to be developed during each 10 year period of the Measure's life. The intent is to spread projects so that no jurisdiction has to wait until the last part of the Measure to receive benefits of Major Local Highway funds.
- d. Allocations shall be made to projects from candidate project lists, developed according to Policy VVMLH-3.
- e. Allocations may serve to maximize leveraging of private, local, federal, and State dollars, with attention to leveraging of Interregional Transportation Improvement Program Funds on the Interregional Road System in the rural areas of the Victor Valley Subarea as well.
- f. Allocations shall be made with an objective of delivering projects at the earliest possible date.

- g. SANBAG shall actively engage in planning and project delivery of Major Local Highway Projects in collaboration with local jurisdictions and Caltrans in a manner which will minimize the time and cost of project delivery.

Policy VVMLH-3: A master list of projects eligible for Victor Valley Major Local Highways Program funding shall be maintained and periodically updated. The list shall be consistent with the project eligibility criteria in Policy VVMLH-1 and shall be approved by the SANBAG Board, based on a recommendation of the Victor Valley subarea representatives and the Mountain/Desert Committee. In preparing the list, input shall be considered from each of the five local jurisdictions and from other public and private stakeholders, such as Caltrans, neighboring counties, transit agencies, federal agencies, business interests and other non-governmental organizations. The list shall represent the list of eligible projects and shall not represent a commitment by SANBAG to fund all or a portion of those projects. Funding commitments will be managed under the terms of Policy VVMLH-6 shown below.

Policy VVMLH-4: Adjustments for the time-value of money shall be based on comparisons of the net present value of Measure I Major Local Highway Program expenditures by Victor Valley jurisdictions, calculated using a discount rate based on the annual change in the Consumer Price Index for the State of California, as maintained by the California Department of Finance. The expenditure date shall be based on the date of consultant/contractor invoices provided to SANBAG for reimbursement on eligible Major Local Highways Program projects.

Policy VVMLH-5: By September 30 of each year, Victor Valley jurisdictions must submit a Five Year Capital Projects Needs Analysis (CPNA) for projects in the Victor Valley Major Local Highways Program. The CPNAs cover a five year prospective period that commences the following fiscal year. The needs analysis shall document project needs by fiscal year and include anticipated funding sources, funding amounts and project phasing where appropriate. The needs analysis shall also demonstrate the availability of the development mitigation fair share funds, where appropriate for projects in the urbanized Victor Valley. Approval of a jurisdiction's CPNA by the jurisdiction's Council/Board of Supervisors must be accommodated within the timeframe of the September 30 submittal date.

Policy VVMLH-6: The SANBAG Board of Directors shall apportion funds to the Major Local Highways Program in the Victor Valley by its February meeting, so that budget documents can be prepared for the subsequent fiscal year, based on a recommendation of the Victor Valley subarea representatives and the Mountain/Desert Committee. The Victor Valley Subarea and Mountain/Desert Committee recommendation shall be informed by requests of Measure I funds contained in the Capital Projects Needs Analysis (CPNA), the status of equitable share percentages from prior years, SANBAG's forecast of Measure I revenue that may be available for the Major Local Highways Program, and SANBAG's assessment of opportunities for leveraging of State and federal funds. The recommendation shall include a table of project phases recommended for funding, project costs, Measure I requests, other funding sources, and the

allocation of costs to jurisdictions, at a minimum. SANBAG staff shall maintain a cumulative accounting of allocations to projects by jurisdiction, adding allocations to jurisdictions' accounts each year. Measure I funds shall be retained by SANBAG until reimbursed to jurisdictions based on invoices received.

Policy VVMLH-7: Each year, SANBAG staff will compile a list of each jurisdiction and the cumulative amount of Major Local Highway funds received for projects. This list will be used by members of the subarea and the Mountain/Desert Committee to make their allocation recommendation to the SANBAG Board of Directors.

Policy VVMLH-8: Equitable shares may be adjusted based on annexation of unincorporated areas into a Town or the incorporation of previously unincorporated areas into a new Town.

B. Development Fair Share Contribution

Policy VVMLH-9: Development Fair Share Contribution is required by Measure I 2010-2040 for Major Local Highway Projects covered under the Development Mitigation Nexus Study for the urbanized areas or a Traffic Impact Analysis in the non-urban areas, excluding any eligible freeway mainline projects. Development fair share for arterials, interchanges and railroad grade crossings are determined by the most recent version of the Nexus Study adopted by the SANBAG Board of Directors in the urbanized Victor Valley or by a Traffic Impact Analysis as required by the SANBAG Congestion Management Program in the non-urbanized areas.

Policy VVMLH-10: Jurisdictions may borrow from other internal accounts (i.e. within their own jurisdictions) to fund the required development fair share for projects. The internal accounts shall be reimbursed by development mitigation as development occurs.

C. Cost Reimbursement

Policy VVMLH-11: The Major Local Highway program shall be administered as a cost reimbursement program. Sponsoring agencies shall enter into Project Funding Agreements with SANBAG prior to receiving authorization from SANBAG to expend funds. Following the authorization to expend funds, the sponsoring agency may incur expenses for the components of the project identified in the scope of work included in the Project Funding Agreement.

Policy VVMLH-12: On an exception basis and subject to SANBAG Board approval, the advanced reimbursement of anticipated expenses may be permissible. Only the right-of-way and construction phases are eligible and are subject to the conditions stated below.

- Right-of-way: Only right-of-way transactions in excess of \$500,000 shall be considered for advance reimbursement. The advanced reimbursement shall be based on an accepted written appraisal or sales contract. Adjustments to this estimate based on actual costs shall be reconciled with SANBAG within 30 days of close of escrow and subject to the provisions governing right-of-way purchase established in Policy VVMLH-23.
- Construction: The advanced reimbursement shall be based on an awarded construction contract in excess of \$10,000,000. The amount to be advanced to the local jurisdiction shall not be greater than 10% of the public share of total project cost or of three months estimated peak burn rate for the project, whichever is less. The advanced reimbursement shall be used to help provide liquidity to the local jurisdiction for payment to the contractor and shall be reconciled at the end of the construction phase of the project. SANBAG shall

reimburse jurisdiction invoices, in addition to the advanced reimbursement amount, until the public share amount remaining in the contract is equivalent to the advanced reimbursement, after which the advanced reimbursement shall satisfy SANBAG reimbursement requirements.

Policy VVMLH-13: A local jurisdiction may begin expenditure of funds following the execution of the Project Funding Agreement. The Project Funding Agreement shall include the scope of work for a project or project phase and a commitment to provide the development share of the funding through all the phases of the project, as required by Policy VVMLH-9. The Project Funding Agreement shall be executed by the local jurisdiction and SANBAG prior to the expenditure of funding on any phase of the project. Local jurisdictions shall not be reimbursed for any costs incurred prior to the execution of the Project Funding Agreement.

Policy VVMLH-14: Local jurisdictions that desire to deliver a Major Local Highway project to which funds cannot be allocated in a given year shall be eligible for reimbursement through an Advance Expenditure Agreement.

D. Local Jurisdiction Invoices

Policy VVMLH-15: Local jurisdictions shall submit invoices to SANBAG for actual expenditures incurred for components of a project as identified in the scope of work included in the Project Funding Agreement. Invoices may be submitted to SANBAG no more frequently than monthly.

Policy VVMLH-16: Local jurisdictions shall provide adequate documentation to substantiate the costs included in the invoice. At a minimum, the jurisdiction must submit the invoice provided by the contractor to the agency, which shall include unit costs, quantities, labor rates and other documentation, as appropriate, to substantiate expenses incurred by the contractor.

Policy VVMLH-17: The sponsoring agency shall be reimbursed for the actual project costs minus the development mitigation fair share percentage documented in the SANBAG Development Mitigation Nexus Study, up to the limit of Measure I Major Local Highway funding specified in the Project Funding Agreement.

E. Local Jurisdiction Reimbursement Schedule

Policy VVMLH-18: SANBAG shall reimburse the local jurisdiction for eligible expenditures within 30 days of receiving a complete and satisfactory invoice package.

F. Development Mitigation Fair Share Credit Agreements

Policy VVMLH-19: Local jurisdictions and developers shall be allowed to enter into credit agreements or other arrangements approved by the Town Council/Board of Supervisors. Such agreements will be strictly between the local jurisdiction and the developer. Jurisdictions are advised to provide these credit agreements to SANBAG for review to ensure they are structured in a way that will adequately document private share costs for which the jurisdiction desires credit.

Policy VVMLH-20: A copy of the credit agreement or other arrangement and invoices to substantiate quantities and unit costs for a Nexus Study project included in a credit agreement or other arrangement shall be provided when a local jurisdiction submits an invoice for reimbursement.

Policy VVMLH-21: Local jurisdictions that submit an invoice involving a credit agreement or other arrangement shall separate the development mitigation portion of construction costs from any non-development mitigation portion of the development project in a verifiable fashion.

Policy VVMLH-22: Reimbursement shall occur for only the public share of the Nexus Study project costs

G. Ineligible Expenditures

Policy VVMLH-23: The following costs are ineligible for reimbursement:

- Additional environmental or architectural enhancement not required as part of the mitigation established in the environmental document(s) prepared for a project.
- Project oversight costs, with the exception of construction support costs
- Property acquired through the right-of-way acquisition process that is not required for the actual construction of a project. SANBAG will either:
 1. Reimburse the jurisdiction for the public share of the portion of the property acquisition required for the project, with the “project portion” calculated as the sales price times the percentage of the acreage actually required for the project, or
 2. At the request of the jurisdiction, reimburse based on the difference between the total sales price of the parcel and the residual value of the excess land not needed for the construction of the project, as determined by a qualified appraisal.
- Additional project scope not included in the Project Funding Agreement between the sponsoring agency and SANBAG, except when SANBAG and the local agency mutually agree to a project scope change and amend the Project Funding Agreement.

H. Construction Cost Overruns

Policy VVMLH-24: Jurisdictions shall bear full responsibility for construction cost overruns, which is established as any amount in excess of the total cost of the accepted bid and contingencies up to 10% of the construction bid. On an exception basis, SANBAG and the local jurisdiction may agree to the modification of the project scope, and the jurisdiction may be reimbursed for the public share of the additional costs pursuant to an amendment to the Project Funding Agreement. On an exception basis, SANBAG and the local jurisdiction may agree to the modification of the project scope, and the jurisdiction may be reimbursed for the public share of the additional costs pursuant to an amendment to the Project Funding Agreement.

I. SANBAG Project Management

Policy VVMLH-25: SANBAG may manage development and delivery of Major Local Highway projects when requested to do so by the sponsoring jurisdiction. In such cases, SANBAG's costs for project management shall be borne by the sponsoring agency.

Policy VVMLH-26: The following conditions are established for projects under SANBAG project management:

- The sponsoring agency must submit a written request for SANBAG oversight of the project
- SANBAG staff or SANBAG consultants must have available staff resources for project management
- The sponsoring agency shall pay actual SANBAG project oversight costs, to be estimated in advance by SANBAG, as documented by the SANBAG financial management system.

J. Cost Buy-down for Projects with a Development Share Contribution

Policy VVMLH-27: State, federal, or private funds may be used to buy down either the total cost of a project, the public share of the project cost, or the development share of the project cost based on the following criteria:

1. Funds that buy down the total cost of the project (after which the development fair share percentage is applied) include State grants and Federal Congressional earmarks (through appropriations process, competition, etc.) from transportation sources that are not allocated or approved by SANBAG (e.g., IM, Demo, TEA (Caltrans allocation), TCRP with local agency listed as lead, PUC, HBRR, and railroad contributions).
2. Funds considered part of the public share of the project cost include apportionments or allocations of State or federal transportation funds to SANBAG for funding of projects, whether managed by SANBAG or local agency (e.g., TCRP and PNRs for Alameda Corridor East, CMIA, TCIF, SLPP), and State allocation and Federal apportionment by SANBAG (e.g., STIP, CMAQ, STP, TEA (SANBAG Allocation), TDA).
3. Funds that buy down the development share of the project cost include other state or federal appropriations of funding to a project from a non-transportation source (e.g., HUD, BIA, DOD).

V. REVISION HISTORY

Revision No.	Revisions	Adopted
0	Adopted by the Board of Directors.	04/01/2009