

High Desert Corridor
Joint Powers Authority

May 3, 2017

Meeting Materials

Item 10a

Authorize receipt of \$719,921 from San Bernardino County Transportation Authority (SBCTA) in accordance with the FY 2016-17 and FY 2017-18 Budget for Programming/
Expenditure of Funds

PROJECT FUNDING AGREEMENT 17-1001703

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

HIGH DESERT CORRIDOR JOINT POWERS AUTHORITY

FOR

HIGH DESERT CORRIDOR PROJECT

THIS Project Funding Agreement (“Agreement”) is made and entered into this 3rd day of May, 2017 by and between the San Bernardino County Transportation Authority (hereinafter referred to as “SBCTA”) and the High Desert Corridor Joint Powers Authority (hereinafter referred to as “JPA”). SBCTA and JPA 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 the High Desert Corridor within San Bernardino County (“PROJECT”) as one of the projects eligible to receive Major Local Highway Program (MLHP) funds; and

B. JPA received from the City of Victorville demonstration funding CA-381 (“DEMO”) authorized in the Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) for the construction of , a road between US-395 west towards SR 14, also known as the High Desert Corridor and is described more fully in Attachment A; and

C. JPA has requested a trade of the DEMO funds for more flexible Measure I funds; and

D. SBCTA can utilize the DEMO funds on the US-395 Interim Widening Project and has Measure I MLHP funds available to trade with the JPA; and

E. Parties desire to proceed with the trade of funds from the PROJECT to the US-395 Interim Widening Project; and

F. On July 6, 2016, SBCTA’s Board of Directors approved the trade of \$719,921 in DEMO funds for \$719,921 in Victor Valley Subarea MLHP funds for the PROJECT; and

G. On April 13, 2017, the Federal Highway Administration approved the repurposing of \$719,921 in DEMO funds from the PROJECT to the US-395 Interim Widening Project; and

H. This Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan; and

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

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

K. SBCTA and JPA are entering into this Agreement with the understanding that SBCTA will reimburse JPA as the sponsoring agency for eligible PROJECT expenditures with MLHP funds in accordance with Measure I Cost Reimbursement Policy VVMLH-11.

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

SECTION I

SBCTA AGREES:

1. To reimburse JPA for the actual cost of the PROJECT up to a maximum of \$719,921 in MLHP funds. An estimate of costs for the PROJECT is provided in Attachment B. SBCTA shall have no further responsibilities to provide any funding for PROJECT exceeding this amount unless an amendment to this Agreement is approved by the Parties.
2. To reimburse JPA within thirty (30) days after JPA submits an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by JPA up to a maximum of \$719,921, 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 JPA 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. SBCTA shall assign a project liaison for the purpose of attending Project Development Team (PDT) meetings.

SECTION II

JPA 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 expending that portion of allocated MLHP funds on eligible PROJECT expenses for an amount not to exceed \$719,921 in MLHP funds 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 JPA staff are considered eligible PROJECT expenses and may be charged to the PROJECT, subject to SBCTA's guidelines.
3. To abide by all SBCTA, JPA, State, and Federal laws, regulations, policies and procedures pertaining to the PROJECT.
4. 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.
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 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 the JPA office at 385 N. Arrowhead Ave., 2th Floor, San Bernardino, CA 92415-0130. Copies will be made and furnished by JPA upon written request by SBCTA.
6. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support JPA'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 JPA.
7. 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.
8. 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.

9. 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 JPA receiving notice of audit findings, which time shall include an opportunity for JPA to respond to and/or resolve the findings. Should the findings not be otherwise resolved and JPA 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, the SBCTA reserves the right to withhold future payments due JPA from any source under SBCTA's control.
10. To include SBCTA 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 SBCTA, and to consult with SBCTA on critical issues relative to 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 JPA 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 JPA determines PROJECT work may exceed the not to exceed amount identified in Section I, Paragraph 1, JPA 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 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 JPA 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 JPA under or in connection with any work, authority or jurisdiction delegated to JPA under this Agreement. It is understood and agreed that, pursuant to

Government Code Section 895.4, JPA 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 JPA under or in connection with any work, authority or jurisdiction delegated to JPA under this Agreement. JPA'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 JPA 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 JPA, 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 JPA's "active" as well as "passive" negligence but does not apply to JPA's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
7. This Agreement will be considered terminated upon reimbursement of eligible costs by SBCTA or June 30, 2022, whichever is sooner, provided that the provisions of Paragraphs 5, 6, 7, 8, and 9 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 work described in Attachment A has not been initiated by JPA within twelve (12) months of the Effective Date of this Agreement.
8. SBCTA may terminate this Agreement if JPA 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.
9. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.
10. Attachment A, The High Desert Corridor Project (Description of Project and Milestones), and Attachment B, High Desert Corridor Project (Summary of Estimated Costs), are attached to and incorporated into this Agreement.
11. This Agreement may be signed in counterparts, each of which shall constitute an original.
12. This Agreement is effective and shall be dated on the date executed by SBCTA.

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

- SIGNATURES ON NEXT PAGE -

**SAN BERNARDINO COUNTY
TRANSPORTATION AUTHORITY**

**HIGH DESERT CORRIDOR
JOINT POWERS AUTHORITY**

By: _____
Robert A. Lovingood, President
Board of Directors

By: _____
Robert A. Lovingood, JPA Chairman

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____
Eileen Monaghan Teichert
SBCTA General Counsel

By: _____
Carol A. Greene
Supervising Deputy County Counsel

Date: _____

By: _____
Jeffery Hill
Procurement Manager

Date: _____

Attachment A

HIGH DESERT CORRIDOR PROJECT

Description of Project

The County of San Bernardino, County of Los Angeles, and the Cities of Adelanto, Victorville, Apple Valley, Lancaster, and Palmdale have formed a Joint Power Authority (JPA) to develop a new freeway/expressway from SR14 to six miles East of I-15 in the Town of Apple Valley. The JPA will combine the many separate efforts currently underway into one combined project. The High Desert Corridor (HDC) is officially designated in Section 1305 of SAFETEA-LU as a High Priority Corridor on the National Highway System from Los Angeles to Las Vegas via Palmdale and Victorville.

The funds will be used for the HDC project development:

- interoperability and connectivity of the HDC passenger rail component with the proposed California High Speed Rail, Metrolink, DesertXpress, and other potential rail services
- further the identification of revenue and phasing of the highway and rail components
- further the identification of revenue and cost savings from the Green Corridor component and land adjacent
- investigation and right of way acquisition for Highway, rail, good movements, and green energy components of the project
- public relations and outreach
- Staff time administering the project development
- Other project related studies as needed

Project Milestones

Draft Project Report, Phase 1	December 2006
Final Environmental Impact Report/Environmental Impact Statement	June 2016
Investment Grade Ridership & Revenue Forecasts	November 2016

Future Tasks and Deliverables

Task No.	Task Description	Schedule
1	Ridership and Revenue Study and Request for Expressions of Interest	Weeks 1-16
2	Phasing and Financing	Weeks 9-36
3	Procurement Strategy	Weeks 9-36
4	Final Procurement Activities (if the HDC JPA elects to lead the procurement of the project)	Future
5	Green Energy Development	Weeks 1-36
6	Land Use Strategy	Weeks 36-44
7	Goods Movement Strategy	Weeks 12-24

ATTACHMENT B
HIGH DESERT CORRIDOR PROJECT

Summary of Estimated Costs

Component	Total Cost	SBCTA SHARE* MLHP Funds	JPA Funds
PA&ED			
PS&E		\$719,921	
Right of Way			
Construction			
Total		\$719,921	

*SBCTA's Share can be from sources under control of SBCTA 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.