



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** August 13, 2013
From: Brad Miller, Town Engineer **Item No:** 8
Subject: KIOWA ROAD CHIP SEAL PROJECT TOWN/COUNTY AGREEMENT
T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

Approve and sign the attached Cooperative Agreement with the County of San Bernardino for the Kiowa Road Chip Seal Project.

SUMMARY:

The Town of Apple Valley received a Cooperative Agreement from the County of San Bernardino Department of Public Works regarding chip sealing Kiowa Road South of Tussing Ranch Road. A portion of the work area is a Town/County shared road.

The project consists of applying a chip seal application to the existing road surface from Tussing Ranch Road south to Van Dusen Road and replacement of all existing traffic striping for an estimated total cost of \$65,010.00. The County's share is estimated to be \$48,179 (74.11%) and the Town's share is estimated to be \$16,831 (25.89%). County forces will perform all of the work involved in the project including project administration.

The attached Agreement between the Town and County further defines the responsibilities for each jurisdiction, as well as the cost sharing involved.

FISCAL IMPACT:

Funding for payment of the Town's share of the estimated cost of this project is available in the FY 2013-2014 Measure I Local Fund. Upon approval, a budget amendment will be generated to allocate the necessary funds for the project.

ATTACHMENTS:

1. Town of Apple Valley/San Bernardino County Cooperative Agreement.

WHEREAS, Streets and Highways Code sections 1685 and 1803 authorize APPLE VALLEY to contract with COUNTY for the maintenance, construction or repair of APPLE VALLEY streets and roads, if the legislative body of APPLE VALLEY determines that it is necessary for the more efficient maintenance, construction, or repair of streets and roads; and

WHEREAS, the legislative body of APPLE VALLEY determines that it is necessary for the more efficient maintenance, construction, or repair of streets and roads with APPLE VALLEY to contract with COUNTY for the PROJECT; and

WHEREAS, COUNTY Department of Public Works Operations Division will perform chip seal work on the subject road; and

WHEREAS, it is anticipated that the PROJECT will be financed through Gas Tax, which is assigned in the COUNTY's Road Operations budget, and APPLE VALLEY local funds; and

WHEREAS, the total cost of the PROJECT is estimated to be \$65,010; and

WHEREAS, COUNTY's share is estimated to be \$48,179 (74.11%) and APPLE VALLEY's share is estimated to be \$16,831 (25.89%), as more particularly set forth in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, the above-described costs are proportioned based on work done in each parties jurisdiction; and

WHEREAS, COUNTY and APPLE VALLEY desire to set forth responsibilities and obligations of each as they pertain to such participation and to the construction and funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Act as the Lead Agency in the construction of the PROJECT. Right of Way services are not anticipated for the PROJECT.
- 1.2 Utilize COUNTY's Department of Public Works Operations labor force in providing services under this Agreement.
- 1.3 Obtain a no-cost permit from APPLE VALLEY for work within the APPLE VALLEY's right-of-way.
- 1.4 Pay its proportionate share of the PROJECT costs, which shall be 74.11% of the estimated PROJECT costs (see Exhibit "A"). The PROJECT costs shall include the cost of the PROJECT construction, inspection, material and California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et. seq.) and COUNTY overhead costs. The COUNTY's proportionate share of cost for the PROJECT is estimated at \$48,179 (74.11% of PROJECT). The COUNTY shall be responsible for the sum of \$48,179, plus its share of any PROJECT cost increases, pursuant to paragraph 3.6 below.
- 1.5 Submit to APPLE VALLEY an itemized accounting of actual PROJECT costs incurred by the COUNTY to date and which have not been paid by APPLE VALLEY and a statement for APPLE VALLEY's proportionate share of the PROJECT costs, as provided herein. Costs shall be amended following APPLE VALLEY and COUNTY's acceptance of the final construction cost accounting. In no event shall APPLE VALLEY's share of the PROJECT costs exceed a cost overrun of 25 percent (\$21,039) of the estimate absent a written amendment to this Agreement approved by both parties.
- 1.6 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.

1.7 After APPLE VALLEY's and COUNTY's acceptance of the completed construction work, COUNTY shall resume operation and maintenance those portions of the PROJECT within the unincorporated area of the COUNTY, in accordance with COUNTY regulations, policies and procedures.

2.0 APPLE VALLEY AGREES TO:

- 2.1 Pay to the COUNTY its proportionate share of the PROJECT costs, which shall be 25.89% of the PROJECT costs (see Exhibit "A"). The PROJECT costs shall include the cost of the PROJECT construction, inspection, material, CEQA compliance and COUNTY overhead costs. APPLE VALLEY's proportionate share of cost for the PROJECT is estimated at \$16,831 (25.89% of PROJECT). APPLE VALLEY shall pay the sum of \$16,831 to the COUNTY within thirty (30) days after receipt of an invoice from the COUNTY, pursuant to paragraph 1.5. APPLE VALLEY shall be responsible for the sum of \$16,831, plus its share of any PROJECT cost increases, pursuant to paragraph 3.6 below.
- 2.2 Pay to COUNTY, on a reimbursement basis, its share of PROJECT costs, including its proportionate share of any PROJECT cost increases pursuant to paragraph 3.6 below, within thirty (30) days after receipt of an itemized statement as set forth in paragraph 1.5 of this Agreement setting forth all actual PROJECT costs incurred by COUNTY to date and which have not already been paid by APPLE VALLEY, together with adequate documentation of said expenditures. APPLE VALLEY's share of the PROJECT costs shall not exceed a cost overrun of 25 percent (\$21,039) of the estimate absent a written amendment to this Agreement approved by both parties.
- 2.3 Provide a no-cost permit to the COUNTY for its work in APPLE VALLEY's right-of-way.
- 2.4 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the chip seal work with the COUNTY.
- 2.5 After APPLE VALLEY's and COUNTY's acceptance of the completed construction work, APPLE VALLEY shall resume operation and maintenance those portions of the PROJECT within the incorporated area of the APPLE VALLEY, in accordance with APPLE VALLEY regulations, policies and procedures.

3.0 IT IS MUTUALLY AGREED:

- 3.1 COUNTY agrees to indemnify and hold harmless APPLE VALLEY and its officers, agents, volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the COUNTY's negligent acts or omissions which arise from the COUNTY's performance of its obligations under this agreement.
- 3.2 APPLE VALLEY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the COUNTY and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of its obligations under this agreement.
- 3.3 In the event the COUNTY and/or APPLE VALLEY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY and/or APPLE VALLEY shall indemnify the other to the extent of its comparative fault. Furthermore, if the COUNTY or APPLE VALLEY attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the COUNTY and APPLE VALLEY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
- 3.4 In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 3.1, 3.2 and 3.3 indemnification.
- 3.5 COUNTY and APPLE VALLEY 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.

- 3.6 The Parties acknowledge that final PROJECT cost may ultimately exceed current estimates of the PROJECT cost. Any additional PROJECT costs resulting from increased bid prices, change orders, or arising from unforeseen site conditions, including Utility relocation (but not from requested additional work by the COUNTY or APPLE VALLEY, which is addressed in paragraph 3.7 below) over the estimated total of the PROJECT' cost of \$65,010 (which is the sum of \$48,179 from COUNTY and \$16,831 from APPLE VALLEY) shall be borne by each party based upon where the work is required (e.g. whether the work is required in the COUNTY's or APPLE VALLEY's jurisdiction).
- 3.7 If either COUNTY or APPLE VALLEY requests additional work that is beyond the scope of the original PROJECT(S), and not considered by all parties to be a necessary part of the PROJECT(S), said work, if approved by both parties, will be paid solely by the agency requesting the work, unless both parties agree by written amendment to allocate the cost in accordance with the percentage allocation provided herein, or in some other mutually acceptable manner.
- 3.8 In the event that change orders are required during the course of the PROJECT, said change orders must be in form and substance as set forth in attached Exhibit "B" of this Agreement and approved by both COUNTY and APPLE VALLEY. Contract Change Order forms will be delivered by fax and must be returned within two (2) working days. APPLE VALLEY shall not unreasonably withhold approval of change orders. If an APPLE VALLEY disapproved or modified change order is later found to be a cost of the PROJECT, then APPLE VALLEY shall be responsible for any costs, awards, judgments or settlements associated with the disapproved or modified change order.
- 3.9 If this Agreement is funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009, the COUNTY and APPLE VALLEY shall comply with the following provisions:

Use of ARRA Funds and Requirements - This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on PROJECT funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on PROJECT of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the COUNTY contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information

regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the COUNTY may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the COUNTY with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards - In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the COUNTY may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the COUNTY pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Whistleblower Protection - Contractor agrees that both it and its subcontractors shall comply with Section 1553 if the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

- 3.10 This Agreement shall be for a term of three (3) years and shall terminate upon project completion as described in Paragraph 3.11 or September 30, 2016 (whichever occurs first), but may be terminated by either party (with or without cause) upon providing the other party

- a thirty (30) days advance written notice. In the event of cancellation as provided herein, PROJECT costs required to be paid by the Parties prior to the effective date of cancellation shall be paid by the Parties in the same proportion to their contribution for the PROJECT.
- 3.11 Except with respect to the Parties' operation, maintenance and indemnification obligations contained herein, this Agreement shall terminate upon completion of the PROJECT, and payment of final billing by APPLE VALLEY for its share of the PROJECT costs.
- 3.12 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.13 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between APPLE VALLEY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.
- 3.14 Time is of the essence for each and every provision of this Agreement.
- 3.15 Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 3.16 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
- 3.17 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this Agreement is frustrated.
- 3.18 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.19 The Recitals are incorporated into the body of this Agreement.
- 3.20 This Agreement will be effective on the date it is signed by both Parties.

COUNTY OF SAN BERNARDINO

▶ _____
Janice Rutherford, Chair, Board of Supervisors

Dated: _____

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

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

By _____
Deputy

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

By ▶ _____
(Authorized signature - sign in blue ink)

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


Title _____
(Print or Type)

Dated: _____

Address _____

Approved as to legal form:

APPLE VALLEY Attorney

Approved as to Legal Form
▶ 
County Counsel
Date 7-30-13

Reviewed by Contract Compliance
▶ _____
Date _____

Presented to BOS for Signature
▶ _____
Department Head
Date _____

EXHIBIT "A" – Work Order H14683
ESTIMATE OF PROJECT COSTS

FOR COUNTY OF SAN BERNARDINO/TOWN OF APPLE VALLEY
FOR CHIP SEAL PROJECT

IN THE APPLE VALLEY AREA

DESCRIPTION	LIMITS	TOTAL COST OF PROJECT	COUNTY OF SAN BERNARDINO SHARE	% OF PROJECT COUNTY	TOWN OF APPLE VALLEY SHARE	% OF PROJECT APPLE VALLEY
Chip Seal PROJECT	Kiowa Road, Van Dusen Rd north to Tussing Ranch Rd	\$65,010	\$48,179	74.11%	\$16,831	25.89%
TOTAL		\$65,010	\$48,179	74.11%	\$16,831	25.89%

EXHIBIT B

**CONTRACT CHANGE ORDER REVIEW/APPROVAL
PROJECT: KIOWA ROAD CHIP SEAL**

**COUNTY OF SAN BERNARDINO CONTRACT #
File: H14683**

Proposed Contract Change Order No. _____ has been reviewed in accordance with the existing agreements with Town of Apple Valley and County of San Bernardino for the above project and the following shall apply:

DATE OF TOWN OF APPLE VALLEY ACTION: ____/____/____

- APPROVED for Implementation with 100% Participation by TOWN OF APPLE VALLEY
- APPROVED Subject to Comments/Revisions Accompanying This Document
- APPROVED With Limited Funding Participation by TOWN OF APPLE VALLEY
 - _____% of Actual Cost to be Funded by TOWN OF APPLE VALLEY
 - TOWN OF APPLE VALLEY Participation Not to Exceed \$ _____
- DISAPPROVED -Not Acceptable to TOWN OF APPLE VALLEY

Note: Approval under any of the above conditions shall in no case be construed as agreement to increase the total financial participation beyond that prescribed in the existing TOWN OF APPLE VALLEY and COUNTY OF SAN BERNARDINO agreements without separate amendment to said agreements. Net increases in costs deriving from this and previously approved Contract Change Orders shall not cause the total construction costs to exceed the sum of the authorized contract total and contingency amounts.

Comments, as follows and/or attached, are conditions of the above action? YES NO

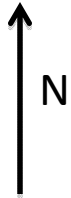
SIGNED: _____

TITLE: _____

Distribution:
Signed Original Returned to Resident Engineer (FAX # 909-387-7920)
Signed Original for TOWN OF APPLE VALLEY File

Project Location

Kiowa Road (between Tussing Ranch Road and Van Dusen Road)



Town Section

County Section