



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** May 26, 2015

From: Brad Miller, Town Engineer **Item No:** 12
Engineering Department

Subject: CHIP SEAL / 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 joint Chip Seal Paving Project.

SUMMARY:

The Town of Apple Valley received a Cooperative Agreement from the County of San Bernardino Department of Public Works regarding the repaving of four (4) segments of Town and County shared roads.

The first segment is the repaving of Joshua Road from South Road to Waalew Road. The jurisdictional split of this segment varies. The Town will be responsible for 50% (\$16,413.00) of the cost for the segment of roadway that is equally split with the County. The County will also pay 50% (\$16,413.00) of the cost for that segment. On another segment of this road, the Town will be responsible for 100% (\$13,888.00) of the cost. The Town will be responsible for a total of \$30,301.00 for the Joshua Road segment.

The second segment is the repaving of South Road from Joshua Road to Mocassin Road. The jurisdictional split of this segment is as follows: the Town will be responsible for 20.3% (\$13,263.00) of the cost and the County will pay 79.7% (\$52,074.00) of the cost.

The third segment is the repaving of Waalew Road from Joshua Road to Tiama Road. The jurisdictional split of this segment is as follows: the Town will be responsible for 11.1% (\$4,730.00) of the cost and the County will pay 88.9% (\$37,881.00) of the cost.

The fourth and last segment is the repaving of Yucca Road from Waalew Road to Valley Crest Terrace. The jurisdictional split of this segment is as follows: the Town will be

responsible for 58.9% (\$7,930.00) of the cost and the County will pay 41.1% (\$5,533.00) of the cost.

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

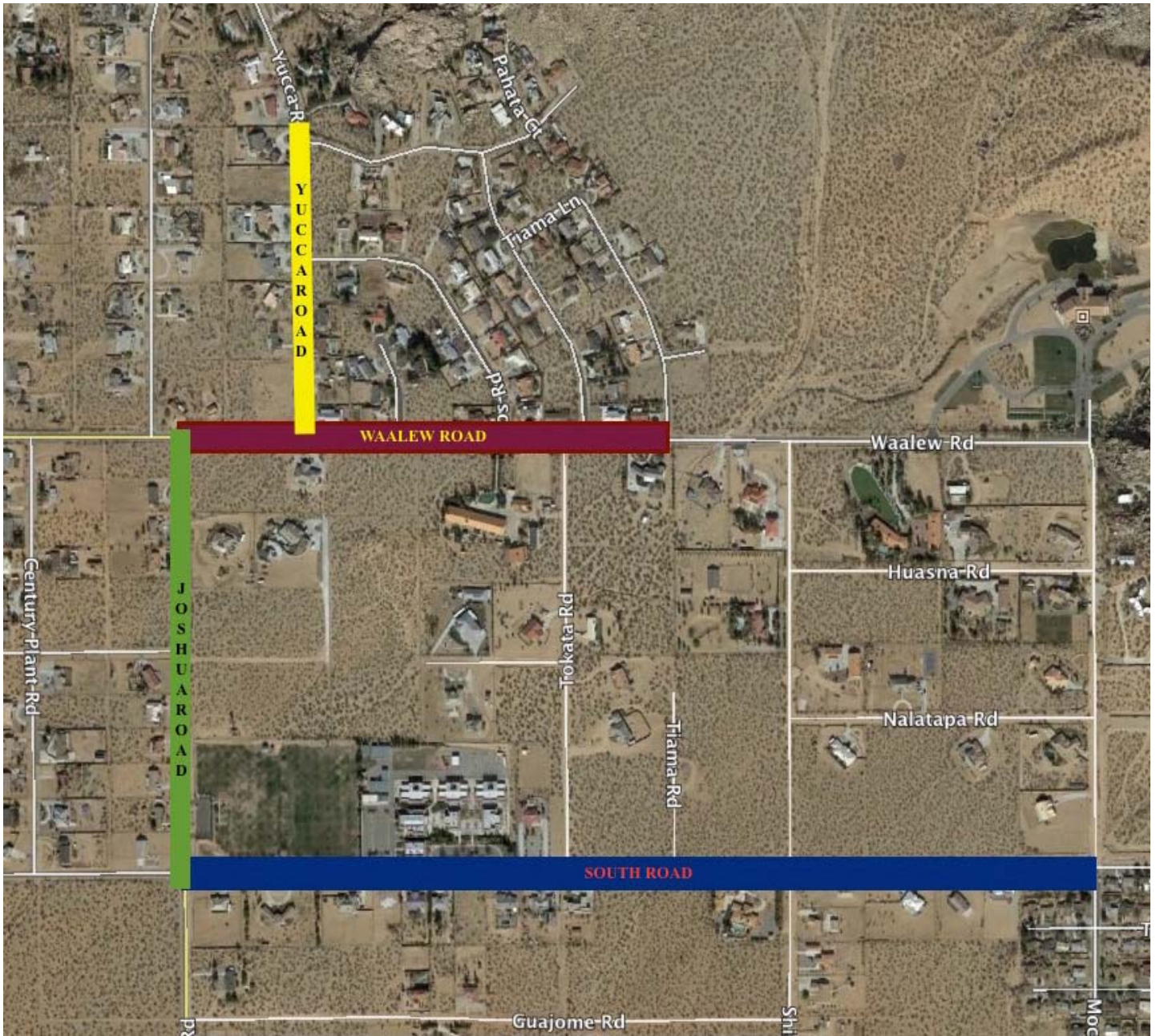
FISCAL IMPACT:

There is no immediate fiscal impact with approval of this agreement in the current fiscal year. The proposed project will utilize \$56,224.00 in available Measure I Local funds during Fiscal Year 2015-16 for the Town's portion of the project cost.

ATTACHMENT:

Town of Apple Valley/San Bernardino County Cooperative Agreement.

Map Exhibit





County of San Bernardino
F A S
STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	FAS Vendor Code	SC	Dept.	A	Contract Number			
<input type="checkbox"/> Change	TOWNOFA303 A		TRA					
<input type="checkbox"/> Cancel								
ePro Vendor Number				ePro Contract Number				
County Department			Dept.	Orgn.	Contractor's License No.			
Public Works - Transportation			TRA	TRA				
County Department Contract Representative				Telephone	Total Contract Amount			
Eric D. Jacobsen, Supervising Transportation Analyst				(909)387-8166	\$56,224.00			
Contract Type								
<input checked="" type="checkbox"/> Revenue		<input type="checkbox"/> Encumbered		<input type="checkbox"/> Unencumbered		<input type="checkbox"/> Other:		
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
91200			5/30/2017	\$				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount		
SAA	TRA	TRA		8842	44H14817	\$ 56,222		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
						\$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
						\$		
Project Name			Estimated Payment Total by Fiscal Year					
Apple Valley Area			FY	Amount	I/D	FY	Amount	I/D
Chip Seal								

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called COUNTY, and

Name
 Town of Apple Valley hereinafter called TOWN
 Address
 14955 Dale Evans Parkway
 Apple Valley, CA 92307
 Telephone (760) 240 - 7000 Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH

WHEREAS, COUNTY and TOWN desire to cooperate and jointly participate in a chip seal project to improve pavement surface on various roads in the Apple Valley area, as described in Exhibit "A", which is attached hereto and incorporated herein by this reference (PROJECT); and

WHEREAS, the PROJECT is partially within the unincorporated area of COUNTY and partially within the incorporated area of TOWN, and will be of mutual benefit to COUNTY and TOWN; and

<i>Auditor-Controller/Treasurer Tax Collector Use Only</i>	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

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

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

WHEREAS, the PROJECT is a maintenance project and will be performed by the COUNTY Department of Public Works Operations Division; and

WHEREAS, it is anticipated that COUNTY's share of PROJECT costs will be from COUNTY Gas Tax funds and TOWN's share of PROJECT costs will be financed through its local funds; and

WHEREAS, the total PROJECT cost is estimated to be \$168,126; and

WHEREAS, COUNTY's share of PROJECT cost is estimated at \$111,904 (66.6%) and TOWN's share of PROJECT cost is estimated at \$56,222 (33.4%), as more particularly set forth in Exhibit "A"; and

WHEREAS, the above-described costs are proportioned based on the type of work performed in each Party's jurisdiction; and

WHEREAS, COUNTY and TOWN desire to set forth the 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 acquisition and utility relocation are not anticipated for the PROJECT and therefore are not included in this contract.
- 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 TOWN for work performed within the TOWN's right-of-way.
- 1.4 Initially fund the construction of the PROJECT.
- 1.5 Bear its share of the actual PROJECT costs, which is estimated at \$111,904 (66.6% of PROJECT cost). The PROJECT costs shall include the cost of PROJECT construction, supervision, inspection, material testing, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et. seq.) and COUNTY overhead costs. COUNTY shall be responsible for the sum of \$111,904, plus its jurisdictional share of any PROJECT cost increases, pursuant to paragraphs 3.7 and 3.8 below.
- 1.6 Upon TOWN's and COUNTY's acceptance of the PROJECT, submit to the TOWN an itemized accounting of actual PROJECT costs incurred by COUNTY and an invoice for TOWN's share of the PROJECT costs, as provided herein.

2.0 TOWN AGREES TO:

- 2.1 Provide a qualified representative who shall have the authority to discuss and attempt to resolve issues concerning the chip seal work with the COUNTY.
 - 2.2 Bear its share of the actual PROJECT costs, which is estimated at \$56,222 (33.4%). The actual PROJECT costs shall include the cost of PROJECT construction, supervision, inspection, material testing, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et. seq.) and COUNTY overhead costs. TOWN shall be responsible for the sum of \$56,222, plus its jurisdictional share of any PROJECT cost increases, pursuant to paragraphs 3.7 and 3.8 below.
 - 2.3 Pay to COUNTY, on a reimbursement basis, its share of actual PROJECT costs within thirty (30) days after receipt of an itemized statement as set forth in paragraph 1.6 of this Agreement, setting forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditures.
 - 2.4 Provide a no-cost permit to the COUNTY for its work in TOWN's right-of-way.
- 3.0 IT IS MUTUALLY AGREED:
- 3.1 After TOWN's and COUNTY's acceptance of completed PROJECT, the COUNTY shall be responsible for performing any maintenance for the PROJECT that is within the COUNTY unincorporated area and the TOWN shall be responsible for performing any maintenance for the PROJECT that is in the TOWN incorporated area.
 - 3.2 COUNTY agrees to indemnify and hold harmless the TOWN and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from COUNTY's negligent acts or omissions which arise from COUNTY's performance of its obligations under this Agreement.
 - 3.3 TOWN agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless 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.
 - 3.4 In the event the COUNTY and/or the TOWN 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 TOWN shall indemnify the other to the extent of its comparative fault.
 - 3.5 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 3.2, 3.3, and 3.4.
 - 3.6 COUNTY and TOWN are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and TOWN's performance of the terms, conditions or obligations of this Agreement.
 - 3.7 The Parties acknowledge that final PROJECT costs may ultimately exceed current estimates of PROJECT costs. Any additional PROJECT costs resulting from unforeseen conditions (but not from requested additional work by the COUNTY or TOWN, which is addressed in paragraph 3.8 below) over the estimated total of the PROJECT's cost of \$168,126 (which is the sum of \$111,904 from COUNTY and \$56,222 from TOWN) 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 TOWN's jurisdiction).
 - 3.8 If either COUNTY or TOWN requests additional work that is beyond the scope of the original PROJECT, and not considered by all Parties to be a necessary part of the PROJECT, 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 an mutually acceptable manner by written amendment to this Agreement.

- 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 TOWN 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 projects 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 projects 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 agree 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 of 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) a 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 terminate upon completion of the PROJECT and payment of final billing by the TOWN for its share of the actual PROJECT costs or May 30, 2017 (whichever occurs first).
- 3.11 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.
- 3.12 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between TOWN 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.
- 3.13 Time is of the essence for each and every provision of this Agreement.
- 3.14 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 or against any Party. Any term referencing time, days or period for performance shall be deemed COUNTY 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.
- 3.15 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.

- 3.16 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.
- 3.17 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.18 This Agreement will be effective on the date signed by both Parties.
- 3.19 The Recitals are incorporated into the body of this Agreement.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both Parties.

IN WITNESS WHEREOF, the Parties to these presents have hereunto set their hands.

COUNTY OF SAN BERNARDINO

TOWN OF APPLE VALLEY
(Print or type name of corporation, company, contractor, etc.)

► _____
 James Ramos, Chairman, Board of Supervisors

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

Dated: _____

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

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

Title _____
(Print or Type)

Dated: _____

By _____
Deputy

Address _____

Approved as to Legal Form
 ► _____
 Scott M. Runyan, Deputy County Counsel
 Date _____

Reviewed by Contract Compliance
 ► _____
 Grant C. Mann, Chief
 Date _____

Presented to BOS for Signature
 ► _____
 Gerry Newcombe, Department Head
 Date _____

EXHIBIT A
ESTIMATE OF PROJECT COSTS
FOR TOWN OF APPLE VALLEY/COUNTY OF SAN BERNARDINO
FOR PAVEMENT IMPROVEMENT
IN THE APPLE VALLEY AREA

Road #	Road Name	Limits	Work Description	Estimated Total Cost	COUNTY Share	COUNTY %	TOWN Share	TOWN %
451700063	JOSHUA ROAD	.11M N,SOUTH RD N/WAALEW RD	Prep and Chip Seal	\$32,826	\$16,413	50%	\$16,413	50%
Town Road	JOSHUA ROAD	SOUTH RD N/.11M	Prep and Chip Seal	\$13,888	\$0	0%	\$13,888	100%
764850035	SOUTH ROAD	JOSHUA RD E/.06M W,MOCCASIN RD	Prep and Chip Seal	\$65,337	\$52,074	79.7%	\$13,263	20.3%
861950030	WAALEW ROAD	JOSHUA E/0003M E,TIAMA	Prep and Chip Seal	\$42,611	\$37,881	88.9%	\$4,730	11.1%
894300010	YUCCA ROAD	WAALEW N/VALLEY CREST TERR	Prep and Chip Seal	\$13,463	\$5,533	41.1%	\$7,930	58.9%
		Total		\$168,125	\$111,901	66.6%	\$56,224	33.4%