



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** June 28, 2016

From: Brad Miller, Town Engineer **Item No:** 2
Engineering Department

Subject: OCOTILLO WAY OVERLAY PROJECT – TOWN OF APPLE VALLEY/
SAN BERNARDINO COUNTY COOPERATIVE 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 Ocotillo Way Overlay Project.

SUMMARY:

The Town of Apple Valley received a Cooperative Agreement (Agreement) from the County of San Bernardino Department of Public Works regarding the repaving of one (1) Town/County shared road.

The project consists of repaving 0.99 miles of Ocotillo Way from Kiowa Road east to approximately 0.99, just west of Navajo Road (Project). The Project is a maintenance project and will be performed by the county's Department of Public Works Operations labor force. The Town will be responsible for 100% of the work done within the Town of Apple Valley's jurisdiction and the total amount shall not exceed \$70,000.

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

FISCAL IMPACT:

Funding for construction of this Project has been approved in the FY 2015-2016 Capital Improvement Plan under Paving Priorities. The proposed Project will utilize \$70,000 in available Measure I Local to fund the Town's portion of the costs for the Project.

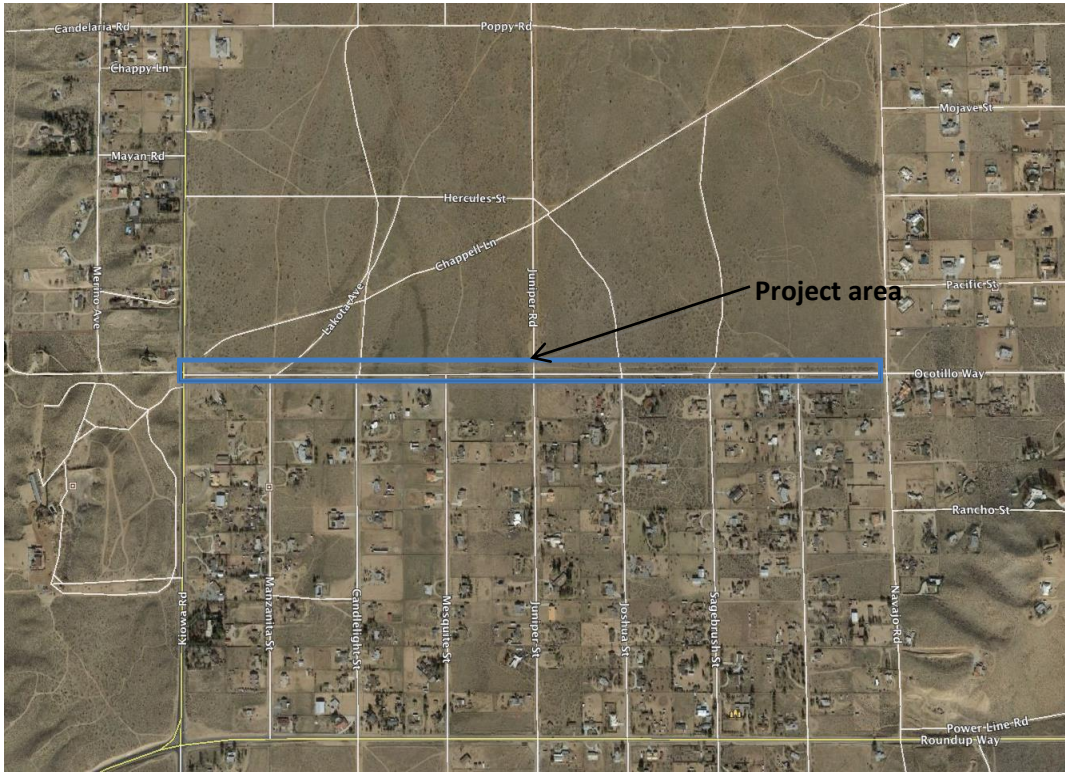
ATTACHMENTS:

1. Vicinity Map – Ocotillo Way (from Kiowa Road to 0.99 miles east)

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

VICINITY MAP:

Ocotillo Way (from Kiowa Road to 0.99 miles east)





**F A S
STANDARD CONTRACT**

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	FAS Vendor Code		Dept.	Contract Number				
<input type="checkbox"/> Change	TOWNOFA303 A		SC	TRA	A			
<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			
Mazin Kasey, P.E., Deputy Director			(909)387-8166		\$70,000			
Contract Type								
<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" 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				\$				
Fund SAA	Dept. TRA	Organization TRA	Appr.	Obj/Rev Source 8842	GRC/PROJ/JOB No 44H14870	Amount \$ 70,000		
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					
Ocotillo Way			FY	Amount	I/D	FY	Amount	I/D
Overlay Project								

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

Name
Town of Apple Valley _____ hereinafter called APPLE VALLEY
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:

WHEREAS, the COUNTY and APPLE VALLEY desire to enter into a cooperative agreement to apply an overlay on the pavement of Ocotillo Way, from Kiowa Road east to approximate .99 mile, in the Town of Apple Valley (hereinafter referred to as PROJECT); and

WHEREAS, California 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 its streets and roads; and

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

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

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

WHEREAS, it is anticipated that APPLE VALLEY's share of PROJECT costs will be financed through its local funds; and

WHEREAS, the total PROJECT cost is estimated to be \$70,000; and

WHEREAS, COUNTY and APPLE VALLEY desire to set forth the responsibilities and obligations of each as they pertain to the administration, 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 on the PROJECT. Right-of-Way services are not anticipated for the PROJECT and therefore are not included in this agreement.
- 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 performed within APPLE VALLEY's right-of-way.
- 1.4 Initially fund the PROJECT.
- 1.5 Have a zero percent (0%) share of the PROJECT cost.
- 1.6 Upon APPLE VALLEY's and COUNTY's acceptance of the PROJECT, submit to APPLE VALLEY an itemized accounting and invoice of actual PROJECT costs incurred by COUNTY.

2.0 APPLE VALLEY AGREES TO:

- 2.1 Bear one hundred percent (100%) of the actual PROJECT costs, which is estimated at \$70,000. The PROJECT costs shall include the cost of the PROJECT construction, supervision, inspection, material testing, CEQA compliance and COUNTY overhead costs. APPLE VALLEY shall be responsible for the sum of \$70,000 plus its jurisdictional share of any PROJECT cost increases, pursuant to paragraphs 3.8 and 3.9 below.
- 2.2 Pay to COUNTY, on a reimbursement basis, actual PROJECT costs within thirty (30) calendar days after receipt of an itemized statement and invoice from the COUNTY pursuant to paragraph 1.6 above.
- 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 PROJECT with the COUNTY.

3.0 IT IS MUTUALLY AGREED:

- 3.1 Before, during and after PROJECT completion, APPLE VALLEY shall be solely responsible for the management, including, but not limited to the operation and maintenance of its streets and property located within the PROJECT area.
- 3.2 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.
- 3.3 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.

- 3.4 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.
- 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 indemnification.
- 3.6 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.
- 3.7 APPLE VALLEY acknowledges that final PROJECT cost may ultimately exceed the current estimate of the PROJECT cost. Any additional PROJECT costs resulting from increased prices or arising from unforeseen conditions (but not from requested additional work by APPLE VALLEY, which is addressed in paragraph 3.8 below) over the estimated total of the PROJECT cost of \$70,000 shall be borne by APPLE VALLEY.
- 3.8 If APPLE VALLEY 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 APPLE VALLEY, unless both Parties agree by written amendment to allocate the cost in some other mutually acceptable manner.
- 3.9 This Agreement shall be for a term of three (3) years and shall terminate upon PROJECT completion as described in paragraph 3.10 or July 30, 2019 (whichever occurs first), but may be terminated by either Party (with or without cause) before the commencement of PROJECT maintenance overlay activities upon providing the other Party thirty (30) calendar 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.
- 3.10 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.
- 3.11 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 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.
- 3.13 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 any or against any Party. 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 The Recitals are incorporated into the body of this Agreement.
- 3.19 This Agreement will be effective on the date it is signed by both Parties.

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

COUNTY OF SAN BERNARDINO

► _____
James Ramos, Chairman, 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	Reviewed by Contract Compliance	Presented to BOS for Signature
► _____ Scott M. Runyan, Deputy County Counsel	► _____ Grant C. Mann, Chief	► _____ Gerry Newcombe, Department Head
Date _____	Date _____	Date _____