

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AUTHORIZE AN AGREEMENT WITH CALTRANS FOR LANDSCAPE MAINTENANCE WITHIN THE MEDIAN OF HIGHWAY 18, BETWEEN NAVAJO ROAD AND CENTRAL ROAD.

Summary Statement:

On October 29, 2008, the Village Property and Business Improvement District (“PBID”) Association Board (“Board”) approved the Highway 18 Raised Median Project (“Project”) as part of its FY2008-09 Budget. The Project includes engineering and landscape design, construction of a raised concrete median, and installation of landscaping and irrigation on Highway 18, from Navajo Road to Central Road. On December 9, 2008, the Town Council also approved the Association’s Budget.

Due to budget constraints, the project is expected to be constructed in four phases (four 1/4-mile sections) over five years. The PBID estimated expenditures are \$150,000 in FY2008-09 and \$125,000 each fiscal year from FY2009-10—FY2012-13. On May 12, 2009, the Council also approved an allocation of \$143,824 from the FY2009-10 Community Development Block Grant (“CDBG”) program. (Over the next three fiscal years, Town staff will submit an annual CDBG application to potentially garner additional construction funds.)

In order to obtain a permit to construct and subsequently maintain the landscaped median in the State Highway, the Town needs to execute a Landscape Maintenance Agreement with the California Department of Transportation (“Caltrans”).

(Continued on next page)

Recommended Action:

That the Town Council authorize the Landscape Maintenance Agreement with Caltrans for the center median of Highway 18, between Navajo Road and Central Road, subject to approval as to form by the Town Attorney and as to content by the Town Manager.

Proposed by: Economic and Community Development Dept **Item Number** _____

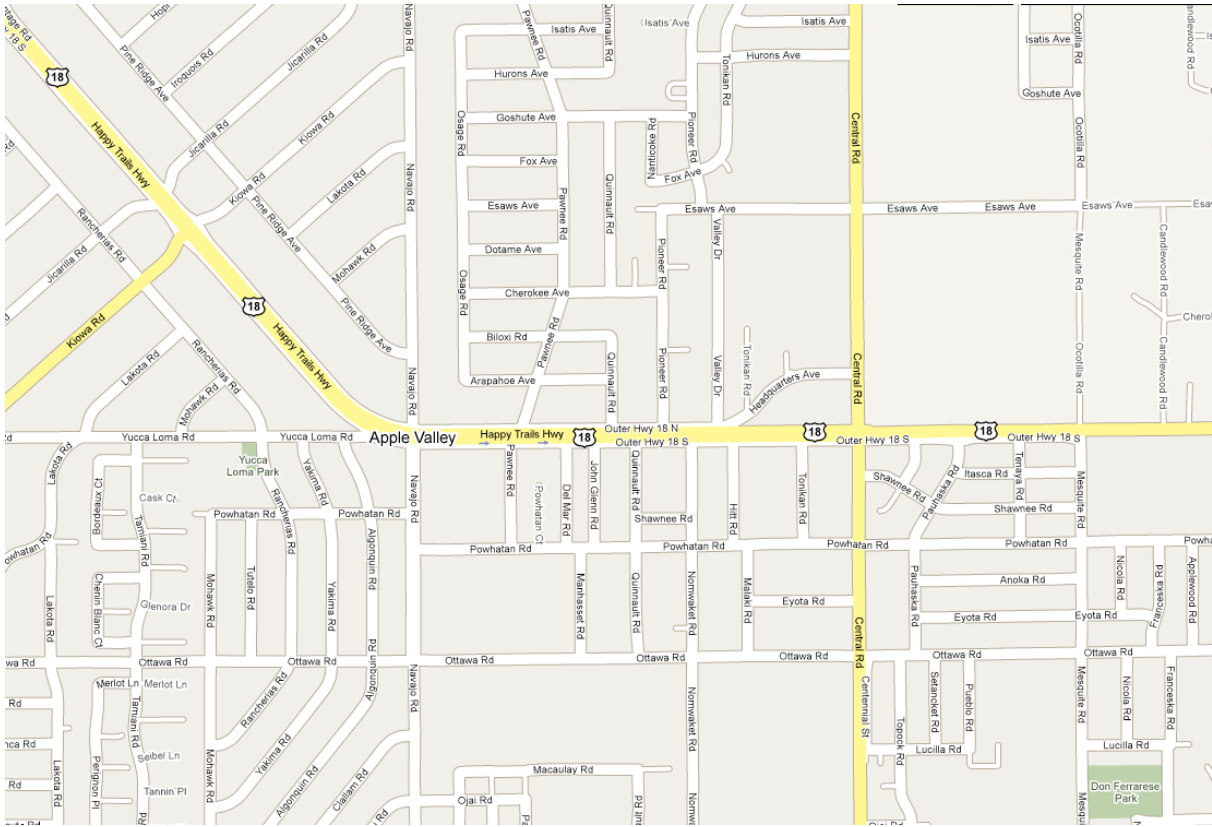
Town Manager Approval: _____ **Budgeted Item** **Yes** **No** **N/A**

On November 18, 2009, in order to demonstrate a good-faith effort, the Board agreed to fund the annual maintenance for the duration of the PBID, through FY2012-2013. After that time, several options will be available to continue to fund the annual landscape maintenance, as follows:

1. If the PBID is reestablished at the end of its five year term (FY2012-13), by a majority vote of its property owners, the Board agrees to fund maintenance.
2. If the PBID is dissolved at the end of its five year term (FY2012-13), a Lighting and Landscape Assessment District ("LLAD") to fund maintenance may be approved and established by a majority of the Village property owners.

The Board agreed to absorb the first three years of annual maintenance costs for two main reasons: 1) Due to the continued decline in construction costs, the PBID may realize construction cost savings allowing for the maintenance costs to be absorbed into the existing Project budgets without increasing the approved budgets; 2) Due to input from the PBID Association Landscape Committee, the project landscape architect has reduced maintenance costs by incorporating xeriscaping; that is, selecting native plants, shrubs and trees that require less maintenance and less irrigation. Estimated monthly maintenance costs are \$500 per ¼-mile section. When each section of the project is constructed, maintenance costs will proportionally increase. At build-out, monthly maintenance for the mile-long median is estimated at \$2,000.

Based upon the Board's actions and allocation of funds, it has demonstrated its commitment to construct and maintain the Project. As such, and based upon the foregoing, staff recommends the Town Council approve the form motion seeking the Town Council's authorization of the Landscaped Maintenance Agreement.



LOCATION



**AGREEMENT FOR LANDSCAPE MAINTENANCE
WITHIN STATE HIGHWAY RIGHT OF WAY
ON ROUTE 18 WITHIN THE TOWN OF APPLE VALLEY**

THIS AGREEMENT is made and executed effective this 8th day of December, 2009, by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the Town of Apple Valley, hereinafter referred to as "TOWN," together referred to as "PARTIES".

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE'S right of way by a Cooperative Agreement dated December 8, 2009, Permit Number (s) 08-09-N-MC-0783.
2. This Agreement addresses TOWN responsibility for landscaping, planting, irrigation systems, litter and weed removal, and sidewalks, (collectively the "LANDSCAPING") placed within State Highway right of way on State Route 18, as shown on Exhibit A, attached to and made a part of this Agreement.

Section I

In consideration of the mutual covenants and promises herein contained, TOWN and STATE agree as follows:

- a) PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, & maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of LANDSCAPING as shown on said Exhibit "A."
- b) When a planned future improvement is constructed and/or a minor revision has been effected with STATE'S consent or initiation within the limits of the STATE'S right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and provide a new dated and revised Exhibit "A" which will be made a part hereof by an amendment to this Agreement when executed and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.

Section II

TOWN agrees, at TOWN expense, to do the following:

- a) TOWN may install, or contract authorizing a licensed contractor with appropriate class of license in the State of California, to install and thereafter will MAINTAIN (section 27 of the Streets and Highways Code) LANDSCAPING conforming to those plans and specifications (PS&E) pre-approved by STATE.
- b) TOWN will submit the final form of the PS&E, prepared, stamped and signed by a licensed civil engineer and landscape architect, for LANDSCAPING to STATE'S District Permit Engineer for review and approval and will obtain and have in place a valid necessary encroachment permit prior to the start of any work within STATE'S right of way. All proposed LANDSCAPING must meet STATE'S applicable standards.
- c) TOWN shall ensure that LANDSCAPED areas designated on Exhibit "A" are provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- d) TOWN will submit a one-time encroachment permit application for routine TOWN MAINTENANCE functions as required by this AGREEMENT. Individual encroachment permits shall be obtained for any substantive repair activities and changes to the scope of work allowed by this agreement prior to the start of any work within STATE'S right of way.
- e) TOWN contractors will also obtain encroachment permits prior to the start of any work within STATE'S right of way.
- f) To furnish electricity for irrigation system controls, water, and fertilizer necessary to sustain healthy plant growth in perpetuity.
- g) To replace unhealthy or dead plantings when observed within 30 days when notified by STATE that plant replacement is required.
- h) To prune shrubs, tree plantings, and trees to control extraneous growth and ensure STATE standard lines of sight to signs and corner sight distances are always maintained for the safety of the public. A separate Encroachment permit may be required.
- i) To MAINTAIN, repair and operate the irrigation systems in a manner that prevents water from flooding or spraying onto STATE highway, spraying parked and moving automobiles, spraying pedestrians on public sidewalks/bike paths, or leaving surface water that becomes a hazard to vehicular or pedestrian/bicyclist travel.

- k) To control weeds at a level acceptable to STATE. Any weed control performed by chemical weed sprays (herbicides) shall comply with all laws, rules, and regulations established by the California Department of Food and Agriculture.
- l) To expeditiously repair any STATE facility damage ensuing from TOWN'S LANDSCAPE, and activities, including, but not limited to, damage caused by plants and plant roots and to reimburse STATE for its costs to repair STATE facility damage ensuing from TOWN'S LANDSCAPE presence and activities should STATE be required to cure a TOWN default.
- m) To remove LANDSCAPING and appurtenances and restore STATE owned areas to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- n) To furnish electricity and MAINTAIN lighting system and controls for all street lighting systems installed by and for TOWN.
- o) To inspect LANDSCAPING on a regular monthly or weekly basis to ensure the safe operation and condition of the LANDSCAPING.
- p) To expeditiously MAINTAIN, replace, repair or remove from service any LANDSCAPING system component that has become unsafe or unsightly.
- q) To MAINTAIN all sidewalks within the AGREEMENT limits of the STATE highway right of way, as shown on Exhibit A, at TOWN expense. MAINTENANCE includes, but is not limited to, concrete repair, replacement and to grind or patch vertical variations in elevation of sidewalks for an acceptable walking surface, and the removal of dirt, debris, graffiti, weeds, and any deleterious item or material on or about sidewalks or the LANDSCAPING in an expeditious manner.
- r) To MAINTAIN all parking or use restrictions signs encompassed within the area of the LANDSCAPING.
- s) To allow random inspection of LANDSCAPING, and sidewalks by a STATE representative.
- t) To keep the entire landscaped area policed and free of litter and deleterious material.
- u) All work by or on behalf of TOWN will be done at no cost to STATE.

Section III

STATE agrees to do the following:

- a) Provide TOWN with timely written notice of unsatisfactory conditions that require correction by TOWN.
- b) Issue encroachment permits to TOWN and TOWN contractors at no cost to them.
- c) Ensure that the costs of relocation, reconstruction or replacement of LANDSCAPING resulting from future public and private projects and encroachment permittees are borne by the parties responsible for these activities that result in the need to relocate, reconstruct or replace the LANDSCAPING.

Section IV

Legal Relations and Responsibilities:

- a) Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or affect the legal liability of either PARTY to this Agreement by imposing any standard of care respecting the design, construction and MAINTENANCE of these STATE highway improvements or TOWN facilities different from the standard of care imposed by law.
- b) If during the term of this Agreement, TOWN should cease to MAINTAIN the LANDSCAPING to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of TOWN at TOWN'S expense or direct TOWN to remove or itself remove LANDSCAPING at TOWN'S sole expense and restore STATE's right of way to its prior or a safe operable condition. The TOWN hereby agrees to pay said STATE expenses within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing LANDSCAPING, STATE will provide written notice to TOWN to cure the default and TOWN will have thirty (30) days within which to effect that cure.
- c) Neither TOWN nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the TOWN and all of its officers and employees from all claims, suits or actions of every name, kind and description

brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of TOWN.

- d) Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that TOWN shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by TOWN under this Agreement.
- e) Insurance
TOWN and their contractors shall maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the State of California, its officers, agents and employees as the additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a certificate of Insurance in a form satisfactory to Department that shall be delivered to Department with a signed copy of this Agreement.
- f) Prevailing Wage Requirements
Workers employed in the performance of work contracted for by LOCAL AGENCY, and /or performed under encroachment permit, are covered by the prevailing wage provisions of the Labor Code in the same manner as are workers employed by STATE'S contractors. LOCAL AGENCY shall require its contractors to include prevailing wage requirements in all subcontracts entered into to perform the work mentioned in this agreement. All the LOCAL AGENCY'S contracts with their contractors shall include a requirement that contractors and their subcontracts shall include prevailing wage requirements identical to those set forth in this Agreement.
- g) Termination
This Agreement may be terminated by timely mutual written consent by the PARTIES, and TOWN'S failure to comply with the provisions of this Agreement will be grounds for a Notice of Termination by STATE.
- h) Term of Agreement
This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the parties or until terminated by STATE for cause.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

TOWN of APPLE VALLEY

By _____
Frank Robinson
Apple Valley Town Manager

LaVonda Pearson
Apple Valley Town Clerk

Approved as to form and procedure:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Attorney
Department of Transportation

RANDELL IWASAKI
Director of Transportation

By _____
District Director

By _____
John Brown
Best, Best, & Krieger
Town Attorney

Approval by STATE'S Attorney is not required unless changes are made to this form, in which case the draft will be submitted for Headquarters' review and approval by STATE'S Attorney as to form and procedures.

EXHIBIT A
HIGHWAY 18 LANDSCAPE AREAS

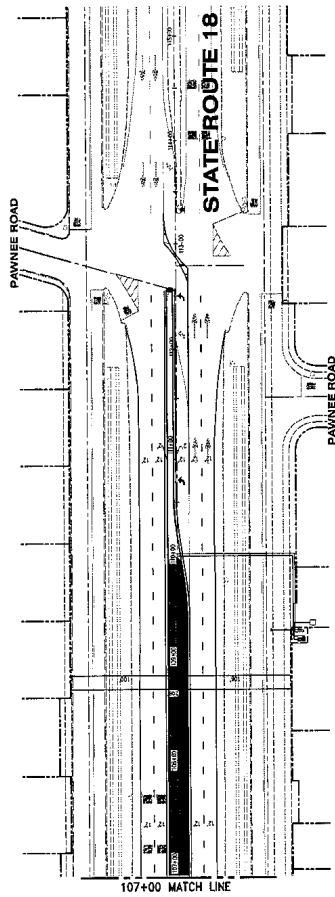
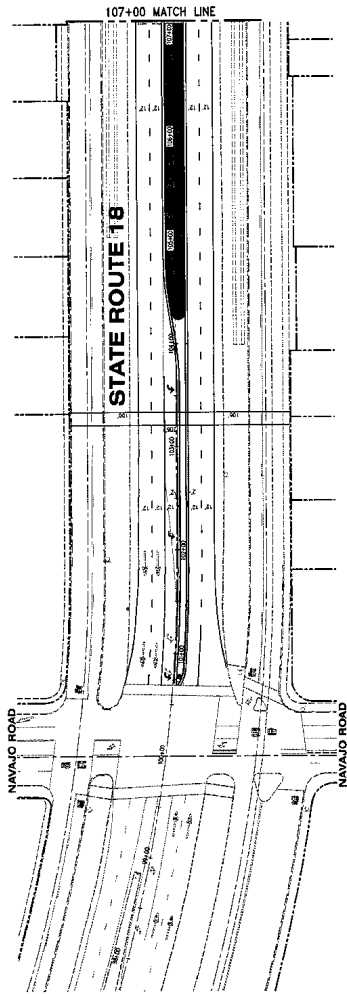


EXHIBIT A
HIGHWAY 18 SECTION OF LANDSCAPE AREAS

