

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

**COOPERATIVE AGREEMENT WITH COUNTY OF SAN BERNARDINO FOR
CHIP SEAL ON CENTRAL AND JOSHUA ROAD**

Summary Statement:

The Town of Apple Valley received a Cooperative Agreement from the County of San Bernardino Department of Public Works regarding the chip sealing of Central Road, from Corwin Road to Lafayette Street, and Joshua Road, from Standing Rock Road to Cahuilla Road. The centerline of these road sections is the boundary between the Town and the County of San Bernardino. The County will act as the lead agency on this project and the Town will only be responsible for the cost of the half-width of both road sections of Central Road, from Corwin Road to Lafayette Street and Joshua Road, from Standing Rock Road to Cahuilla Road.

Attached is an agreement between the Town and the County, which defines the responsibilities of each jurisdiction, as well as explains the cost sharing involved in this agreement. Being that one half of this project is within the Town's limits, the Town responsibility will be 50% (\$36,789.00), and the County's portion of the project is also 50% (\$36,789.00).

Recommended Action:

That the Town Council approve the attached agreement with the County of San Bernardino for the Joshua and Central Road chip seal project.

Proposed by Engineering Department

Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A



COUNTY OF SAN BERNARDINO
FAS
STANDARD CONTRACT

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code		Dept.	Contract Number	
<input type="checkbox"/> Change			SC	TRA	A
<input type="checkbox"/> Cancel					
County Department Public Works – Transportation			Dept. TRA	Orgn. TRA	Contractor's License No.
County Department Contract Representative Carrie L. Schindler, P.E., Chief			Telephone 909 387-8166		Total Contract Amount \$36,789
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: COUNTY IS LEAD AGENCY					
Commodity Code		Contract Start Date	Contract End Date	Original Amount	This Amendment
Fund SAA	Dept. TRA	Organization TRA	Appr. ■	Obj/Rev Source 9800	GRC/PROJ/JOB No. 44H14532
					Orig. Amount \$36,789
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.
					Orig. Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.
					Orig. Amount
Project Name Central Road and Joshua Road Chip Seal			Estimated Payment Total by Fiscal Year		
			FY	Amount	I/D
Contract Type - Special (Risk Management Approved)					

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: 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, the County of San Bernardino (hereinafter referred to as "COUNTY") and the Town of Apple Valley (hereinafter referred to as "TOWN") desire to cooperate and jointly participate in a project to apply a chip seal on Central Road, between Corwin Road and Lafayette Street; and on Joshua Road, between 0.04 miles north of Standing Rock Road and Cahuilla Road, referred to as "PROJECT"; and

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

WHEREAS, Streets & 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

Auditor / Controller – Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

legislative body of TOWN determines that it is necessary for the more efficient maintenance, construction, or repair of streets and roads; and

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

WHEREAS, it is anticipated that the funding for the design and construction phases of the PROJECT will be from COUNTY Discretionary General Funds assigned in the Road Operations budget and TOWN local funds; and

WHEREAS, the total project cost is estimated to be \$73,578; and

WHEREAS, the COUNTY's share of PROJECT cost is estimated at \$36,789 (50% of PROJECT) and TOWN's share of cost is estimated at \$36,789 (50% of PROJECT), 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 TOWN desire to set forth responsibilities and obligations of each as they pertain to such participation and to the design, construction, and funding PROJECT,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Act as the Lead Agency in the design and construction of the PROJECT. Right of way activities are not anticipated for the PROJECT.
- 1.2 Provide plans and specifications and all necessary construction engineering for the PROJECT for TOWN's review and approval.
- 1.3 Construct the PROJECT by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by TOWN.
- 1.4 Obtain a no-cost permit from the TOWN for work within the TOWN's right-of-way.
- 1.5 Advertise, award and administer the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code applicable to counties.
- 1.6 Require its Contractor to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in County Policy Numbers 11-07 and 11-07SP.
- 1.7 Provide adequate inspection of all items of work performed under the construction contract(s) with COUNTY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by TOWN. COUNTY shall provide copies of any records of inspection and materials testing to TOWN within ten (10) days of COUNTY's receipt of written demand from TOWN for such records. This shall be included as a PROJECT cost.
- 1.8 After bid opening and prior to award of the contract, submit to the TOWN an invoice for TOWN's share of PROJECT costs, which are estimated to be \$36,789.
- 1.9 Pay its proportionate share of the PROJECT costs, which shall be 50% of estimated PROJECT costs (see Exhibit A). The PROJECT costs shall include the cost of PROJECT design, construction, construction engineering, survey, inspection, California Environmental Quality Act (CEQA) compliance, and COUNTY overhead. The COUNTY's proportionate share of cost for PROJECT is estimated at \$36,789 (50% of PROJECT). COUNTY shall be responsible for the sum of \$36,789, plus its share of any PROJECT cost increases pursuant to paragraphs 3.7, 3.9 and 3.11 below and pay such costs from COUNTY funds.
- 1.10 Submit to the TOWN an itemized accounting of actual PROJECT costs incurred by COUNTY. If the TOWN's share of the PROJECT cost exceeds the sum of \$36,789 paid up-front by the

TOWN, the itemized accounting shall include an invoice for TOWN's share (based on whether the required work was in TOWN's jurisdiction) of the PROJECT costs in excess of the \$36,789 advance payment. Costs shall be amended following TOWN and COUNTY acceptance of the final construction cost accounting.

- 1.11 Include compliance with any applicable requirements of CEQA, as well as completing the required CEQA documentation.

2.0 TOWN AGREES TO:

- 2.1 Pay to the COUNTY its proportionate share of the PROJECT costs, which shall be 50% of estimated PROJECT costs (see Exhibit A). The PROJECT costs shall include the cost of PROJECT design, construction, construction engineering, survey, inspection, CEQA processing, and COUNTY overhead. TOWN's share of PROJECT costs is estimated at \$36,789 (50% of PROJECT). The TOWN shall pay the sum of \$36,789 to the COUNTY after PROJECT bid opening and prior to the award of the construction contract, pursuant to paragraph 1.8 of the Agreement.
- 2.2 Pursuant to paragraph 1.10 of this Agreement, the TOWN shall reimburse the COUNTY for PROJECT costs in excess of the sum of \$36,789 paid up-front by the TOWN, including TOWN's portion of any PROJECT cost increases pursuant to paragraphs 3.7, 3.9 and 3.11 below. Such reimbursement shall be made within thirty (30) days after receipt of an itemized statement as set forth in paragraph 1.10 of the Agreement, setting forth all actual PROJECT costs incurred by COUNTY to date and which have not already been paid by TOWN, together with adequate documentation of said expenditures.
- 2.3 Provide a no-cost permit to the COUNTY for its work in the 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, 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 TOWN 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 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. Furthermore, if the COUNTY or TOWN attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the COUNTY and TOWN agree that any alleged negligence of the employee shall not be construed against the employer of that employee.
- 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 TOWN are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General 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 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 increased bid prices, change orders, or arising from unforeseen site conditions, including Utility relocation (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' cost of \$73,578 (which is the sum of \$36,789 from COUNTY and \$36,789 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 all parties, will be paid solely by the agency requesting the work, unless all parties agree by written amendment to allocate the cost in accordance with the percentage allocation provided herein, or in some other mutually acceptable manner.
- 3.9 In the case wherein one of the Parties owns a utility that needs to be relocated for the PROJECT and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party's cost. This shall not be included as a PROJECT cost. In the case that a utility relocation is determined to be a PROJECT cost based on that utility having prior rights, the relocation of the utility will be included as a project cost for which the COUNTY and TOWN will be responsible for funding within their respective boundaries.
- 3.10 COUNTY shall notify TOWN of the bids received and the amounts thereof. Within ten (10) days thereafter, COUNTY and TOWN shall determine the cost of the PROJECT. In the event that either party intends to cancel this Agreement based upon the bids or amount thereof, said party shall notify the other party at a reasonable time prior to the awarding of a contract to construct the PROJECT to avoid any detrimental reliance by either contracting party, contractor or potential contractor.
- 3.11 If after opening bids for the PROJECT, it is found that a cost overrun of 25% or less of the estimated PROJECT costs will occur, COUNTY may award the contract.
- 3.12 If, upon opening of bids, it is found that a cost overrun exceeding 25% of the estimated PROJECT costs will occur, COUNTY shall not award any contracts for the PROJECT. Rather COUNTY and TOWN shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If, after thirty (30) working days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.
- 3.13 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 TOWN. Contract Change Order forms will be delivered by fax and must be returned within two (2) working days. The TOWN shall not unreasonably withhold approval of change orders. If a TOWN disapproved or modified change order is later found to be a cost of the PROJECT, then the TOWN shall be responsible for any costs, awards, judgments or settlements associated with the disapproved or modified change order.
- 3.14 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.

- 3.15 This Agreement shall be for a term of three (3) years and shall terminate upon project completion as described in Paragraph 3.16 or June 30, 2014 (whichever occurs first), but may be cancelled upon thirty (30) days advance written notice of either party, provided however, that neither party may cancel this Agreement after COUNTY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, all 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.
- 3.16 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 the TOWN for its share of the PROJECT costs.
- 3.17 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.
- 3.18 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.
- 3.19 Time is of the essence for each and every provision of this Agreement.
- 3.20 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.
- 3.21 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.
- 3.22 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.
- 3.23 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.24 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

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

▶ _____
Josie Gonzales, Chair, 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
▶ _____
County Counsel
Date _____

Reviewed by Contract Compliance
▶ _____
Date _____

Presented to BOS for Signature
▶ _____
Department Head
Date _____

EXHIBIT A
ESTIMATE OF PROJECT COSTS

FOR TOWN OF APPLE VALLEY/COUNTY OF SAN BERNARDINO
FOR CHIP SEAL ON CENTRAL ROAD AND JOSHUA ROAD

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 TOWN
Central Road	Corwin Road to Lafayette Street	\$36,474	\$18,237	50%	\$18,237	50%
Joshua Road	0.04 Miles North of Standing Rock Road to Cahuilla Road	\$37,104	\$18,552	50%	\$18,552	50%
TOTAL		\$73,578	\$36,789	50%	\$36,789	50%

EXHIBIT B

**CONTRACT CHANGE ORDER REVIEW/APPROVAL
PROJECT: CENTRAL ROAD AND JOSHUA ROAD CHIP SEAL**

COUNTY OF SAN BERNARDINO CONTRACT #

File: H14532

Proposed Contract Change Order No. _____ has been reviewed in accordance with the existing agreements with the 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