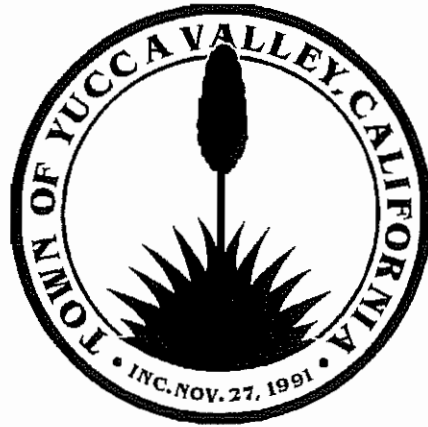


TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING



*The Mission of the Town of Yucca Valley is to
provide a government that is responsive to its citizens
to ensure a safe and secure environment
while maintaining the highest quality of life.*

**TUESDAY, MARCH 20, 2012
CLOSED SESSIONS: 5:00 p.m.
YUCCA VALLEY TOWN HALL CONFERENCE ROOM
57090 – 29 PALMS HIGHWAY
YUCCA VALLEY, CALIFORNIA 92284**

**TOWN COUNCIL: 6:00 p.m.
YUCCA VALLEY COMMUNITY CENTER
YUCCA ROOM
57090 - 29 PALMS HIGHWAY
YUCCA VALLEY, CALIFORNIA 92284**

* * * *

TOWN COUNCIL
Dawn Rowe, Mayor
Isaac Hagerman, Mayor Pro Tem
Merl Abel, Council Member
George Huntington, Council Member
Robert Lombardo, Council Member

* * * *

**TOWN ADMINISTRATIVE OFFICE:
760-369-7207
www.yucca-valley.org**

**AGENDA
MEETING OF THE
TOWN OF YUCCA VALLEY COUNCIL
TUESDAY, MARCH 20, 2012
CLOSED SESSION 5:00 P.M.
TOWN COUNCIL 6:00 P.M.**

The Town of Yucca Valley complies with the Americans with Disabilities Act of 1990. If you require special assistance to attend or participate in this meeting, please call the Town Clerk's Office at 760-369-7209 at least 48 hours prior to the meeting.

An agenda packet for the meeting is available for public view in the Town Hall lobby and on the Town's website, www.yucca-valley.org, prior to the Council meeting. Any materials submitted to the Agency after distribution of the agenda packet will be available for public review in the Town Clerk's Office during normal business hours and will be available for review at the Town Council meeting. Such documents are also available on the Town's website subject to staff's ability to post the documents before the meeting. For more information on an agenda item or the agenda process, please contact the Town Clerk's office at 760-369-7209 ext. 226.

If you wish to comment on any subject on the agenda, or any subject not on the agenda during public comments, please fill out a card and give it to the Town Clerk. The Mayor/Chair will recognize you at the appropriate time. Comment time is limited to 3 minutes.

(WHERE APPROPRIATE OR DEEMED NECESSARY, ACTION MAY BE TAKEN ON ANY ITEM LISTED IN THE AGENDA)

CLOSED SESSION 5:00 p.m. (PUBLIC COMMENTS WILL BE TAKEN AT TOWN HALL BEFORE THE COUNCIL ADJOURNS TO CLOSED SESSION)

- . CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION
The legislative body is deciding whether or not to initiate litigation pursuant to Government Code Section 54956.9(c). (1 case)

OPENING CEREMONIES 6:00 p.m.

CALL TO ORDER

ROLL CALL: Council Members Abel, Hagerman, Huntington, Lombardo, and Mayor Rowe.

PLEDGE OF ALLEGIANCE

INVOCATION

Led by Mike Yost, Joshua Springs Calvary Chapel

AGENCY REPORTS

Chamber of Commerce

1. Monthly Report for February, 2012

APPROVAL OF AGENDA

Action: Move _____ 2nd _____ Voice Vote _____

CONSENT AGENDA

- 1-7 2. Regular Town Council Meeting Minutes of March 6, 2012.

Recommendation: Approve minutes as presented.

3. Waive further reading of all ordinances (if any in the agenda) and read by title only.

Recommendation: Waive further reading of all ordinances and read by title only.

- 8-10 4. AB1234 Reporting Requirements

Recommendation: Receive and file the AB1234 Reporting Requirement Schedule for the month of February, 2012.

- 11-12 5. Statistical Fire Department Report for February 2012

Recommendation: Receive and file the report.

- 13-23 6. Remote Caller Bingo Ordinance

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, REPEALING CHAPTER 17 OF DIVISION 1 OF TITLE 4 OF THE SAN BERNARDINO COUNTY CODE AS ADOPTED BY THE TOWN OF YUCCA VALLEY, AND ADDING CHAPTER 5.30 TO TITLE 5 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE, REGARDING TRADITIONAL AND REMOTE CALLER BINGO

Recommendation: Adopt the Ordinance.

- 24-29 7. Approval of Amendment No. 6 to the MBTA Joint Powers Agreement.

Recommendation: Approve Amendment Number 6 to the Morongo Basin Transit Authority's Joint Powers Agreement

- 30-32 8. 2011-2012 OHV Grant Request

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, APPROVING THE APPLICANT TO APPLY FOR GRANT FUNDS FOR THE STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION, OFF-HIGHWAY VEHICLE GRANT FUNDS

Staff Report

Recommendation: Approve the Governing Body Resolution for the 2011-2012 OHV grant application.

- 33-52 9. State Safe Routes to School Grant Application (SR2S)
Authorization to Submit Grant Application

Recommendation: That the Town Council authorizes Town staff to submit a Safe Routes to School (SR2S) grant application for the March 30, 2012 grant cycle, for the following project, and directs staff to return with a budget amendment appropriating a maximum \$50,000 from Fund 516, LTF, to provide the necessary 10% match requirement, if the grant application is successful.

- 53-81 10. 2011 General Plan Annual Review
Annual Housing Element Report

Recommendation: That the Town Council receives and files the General Plan 2011 Annual Report.

- 82-105 11. General Plan Vision 2035

Recommendation: That the Town Council approves Alternative 1 Vision 2035 for the General Plan Update project.

106-127 12. Church Street Improvements – Town Project No. 8348
Award of Construction Contract

Recommendation: That the Town Council:

1. Waives the minor defects in the bid consisting of the bidder’s failure to remove, following an addendum issued by the Town, costs of curb ramp construction from the bid documents, finding that the bid submitted by United Paving Company Inc., substantially conforms to the Call for Bids and the defect in the bid did not affect the lowest responsible and responsive bidder determination, nor was any bidder given an advantage or benefit not allowed other bidders. Moreover, the defect in the United Paving Company Inc., proposal do not relate to, or impact, the issue of bidder responsibility;

2. Awards the construction contract, pending final property acquisition by San Bernardino County Superior Court, to United Paving Company, Inc., in the amount of \$151,863.00; and, authorizes a construction contingency in the amount of \$10,137.00, for a total contract amount of \$162,000, authorizing the Mayor, Town Manager and Town Attorney to sign all necessary documents, and authorizing the Town Manager to expend the contingency fund, if necessary, to complete the project.

128-134 13. Warrant Register, March 20, 2012

Recommendation: Ratify the Warrant Register total of \$256,927.51 for checks dated March 8, 2012. Ratify Payroll Registers total of \$145,372.58 for checks dated March 2, 2012.

All items listed on the consent calendar are considered to be routine matters or are considered formal documents covering previous Town Council instruction. The items listed on the consent calendar may be enacted by one motion and a second. There will be no separate discussion of the consent calendar items unless a member of the Town Council or Town Staff requests discussion on specific consent calendar items at the beginning of the meeting. Public requests to comment on consent calendar items should be filed with the Town Clerk/Deputy Town Clerk before the consent calendar is called.

Recommendation: Adopt Consent Agenda (items -)(roll call vote)

Action: Move _____ 2nd _____ Roll Call Vote _____

DEPARTMENT REPORTS

- 135-207 14. Financing, Disposition and Development Agreement for Affordable Senior Housing Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY CALIFORNIA APPROVING THE AFFORDABLE HOUSING FINANCING, DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA

Staff Report

Recommendation: That the Town Council:

- 1. Adopt the Resolution approving the Financing, Disposition and Development Agreement between the Town and National Community Renaissance of California (“NCRC”) establishing the terms under which the Town will support development of a seventy-five (75) unit affordable senior housing project; and**
- 2. Authorize the Town Manager, Mayor, and Town Attorney to execute all documents required to support the NCRC application for Tax Credits as part of a March Tax Credit Allocation submittal.**

Action: Move _____ 2nd _____ Roll Call Vote _____.

POLICY DISCUSSION

FUTURE AGENDA ITEMS

PUBLIC COMMENTS

In order to assist in the orderly and timely conduct of the meeting, the Council takes this time to consider your comments on items of concern which are on the Closed Session or not on the agenda. When you are called to speak, please state your name and community of residence. Notify the Mayor if you wish to be on or off the camera. Please limit your comments to three (3) minutes or less. Inappropriate behavior which disrupts, disturbs or otherwise impedes the orderly conduct of the meeting will result in forfeiture of your public comment privileges. The Town Council is prohibited by State law from taking action or discussing items not included on the printed agenda.

STAFF REPORTS AND COMMENTS

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

15. Council Member Huntington
16. Council Member Lombardo
17. Council Member Abel
18. Mayor Pro Tem Hagerman
19. Mayor Rowe

ANNOUNCEMENTS

Time, date and place for the next Town Council meeting.

Next Town Council Meeting, Tuesday, April 3, 2012, 6:00 p.m.

CLOSING ANNOUNCEMENTS

ADJOURNMENT

Yucca Valley Town Council

Meeting Procedures

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Town of Yucca Valley Town Council in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Yucca Valley Town Council, Commissions and Committees.

Agendas - All agendas are posted at Town Hall, 57090 Twentynine Palms Highway, Yucca Valley, at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed at the Town Hall offices located at 57090 Twentynine Palms Highway, Yucca Valley.

Agenda Actions - Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Town Council will generally consider items in the order listed on the agenda. However, items may be considered in any order. Under certain circumstances new agenda items can be added and action taken by two-thirds vote of the Town Council.

Closed Session Agenda Items - Consideration of closed session items, *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Mayor will announce the subject matter of the closed session. If final action is taken in closed session, the Mayor shall report the action to the public at the conclusion of the closed session.

Public Testimony on any Item - Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Town Council should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the Town Clerk prior to the Council's consideration of the item. A "Request to Speak" form must be completed for *each* item when an individual wishes to speak. When recognized by the Mayor, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Council, speakers are limited to up to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Council at any one meeting. The Mayor or a majority of the Council may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Council member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

Agenda Times - The Council is concerned that discussion takes place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

Public Comment - At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject with Council's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. The time limits established in Rule #4 still apply.*

Disruptive Conduct - If any meeting of the Council is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Mayor may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Council without first being recognized, not addressing the subject before the Council, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Council from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for all Town of Yucca Valley meetings. Your cooperation is appreciated!*

ACRONYM LIST

ADA	Americans with Disabilities Act
CAFR	Comprehensive Annual Financial Report
CALTRANS	California Department of Transportation
CEQA	California Environmental Quality Act
CCA	Community Center Authority
CDBG	Community Development Block Grant
CHP	California Highway Patrol
CIP	Capital Improvement Program
CMAQ	Congestion Mitigation and Air Quality
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COP	Certificates of Participation
CPI	Consumer Price Index
ED	Economic Development
EIR	Environmental Impact Report (pursuant to CEQA)
GAAP	Generally Accepted Accounting Procedures
GASB	Governmental Accounting Standards Board
IEEP	Inland Empire Economic Partnership
IIPP	Injury and Illness Prevention Plan
IRC	Internal Revenue Code
LAIF	Local Agency Investment Fund
LLEBG	Local Law Enforcement Block Grant
LTF	Local Transportation Fund
MBTA	Morongo Basin Transit Authority
MBYSA	Morongo Basin Youth Soccer Association
MDAQMD	Mojave Desert Air Quality Management District
MOU	Memorandum of Understanding
MUSD	Morongo Unified School District
PARSAC	Public Agency Risk Sharing Authority of California
PERS	California Public Employees Retirement System
PPA	Prior Period Adjustment
PVEA	Petroleum Violation Escrow Account
RDA	Redevelopment Agency
RSA	Regional Statistical Area
RTP	Regional Transportation Plan
SANBAG	San Bernardino Associated Governments
SCAG	Southern California Association of Governments
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TEA-21	Transportation Enhancement Act for the 21 st Century
TOT	Transient Occupancy Tax

COUNCIL COMMITTEE MEETING TIMES

<u>COMMITTEE</u>	<u>REPRESENTATIVE</u>	<u>TIMES</u>	<u>LOCATION</u>
SANBAG	HUNTINGTON ROWE (ALT)	9:30am 1st Wed	San Bernardino
MEASURE I	HUNTINGTON ROWE (ALT)	9:00 a.m. 3rd Fri.	Apple Valley
DESERT SOLID WASTE JPA	HUNTINGTON LOMBARDO (ALT)	10:00am 2nd Thurs Feb, May, Aug, Nov	Victorville
LEAGUE OF CALIFORNIA CITIES DESERT/MOUNTAIN DIVISION	LOMBARDO ROWE (ALT)	10:00am. 4th Fri quarterly	Various Locations
MORONGO BASIN TRANSIT AUTHORITY	ABEL HUNTINGTON ROWE (ALT)	5:00 pm 4th Thurs	Joshua Tree
MOJAVE AIR QUALITY DISTRICT	ABEL ROWE (ALT)	10:00am 4th Mon	Victorville
LEAGUE OF CALIFORNIA CITIES LEGISLATIVE DELEGATE	MAYOR		
SANBAG PLANS AND PROGRAMS (appointed by Sanbag Board)	HUNTINGTON	12:00 p.m. 3 rd Wed.	San Bernardino
LEGISLATIVE TEAM	HUNTINGTON ROWE	Proposed for Council Member to work with Town Manager meeting with legislators when necessary.	
FLOOD CONTROL ZONE 6	MAYOR		

CITY/COUNTY ANIMAL SERVICES JPA	HUNTINGTON HAGERMAN	10:00 a.m. last Thurs.	Yucca Valley
AD HOC COMMITTEES			
SENIOR HOUSING	HUNTINGTON ROWE		
SEWER FINANCING	ROWE HAGERMAN		
COUNCIL RULES & PROCEDURES	HUNTINGTON LOMBARDO		
MORONGO UNIFIED SCHOOL DISTRICT	ROWE HAGERMAN		
AUDIT			

TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING MINUTES
March 6, 2012

OPENING CEREMONIES

Council Members Present: Abel, Hagerman, Huntington, Lombardo, and Mayor Rowe.

Staff Present: Town Manager Nuaimi, Deputy Town Manager Stueckle, Town Attorney Laymon, Community Services Director Schooler, Administrative Services Director Yakimow, Police Capt. Miller, and Town Clerk Anderson

PLEDGE OF ALLEGIANCE

Led by Ramon Mendoza

INVOCATION

Led by Pastor Jerel Hagerman, Joshua Springs Calvary Chapel

APPROVAL OF AGENDA

Council Member Abel moved to approve the agenda. Council Member Hagerman seconded. Motion carried 5-0 on a voice vote.

CONSENT AGENDA

1. **Approve**, Regular Town Council Meeting Minutes of February 21, 2012, as presented.
2. **Waive**, further reading of all ordinances (if any in the agenda) and read by title only.
3. **Affirm**, staff findings regarding the undergrounding of utilities associated with the Parthen Products development at 6650 La Contenta Road, Yucca Valley, CA 92284, and ratify a refund in the amount of \$19,390.42 pursuant to the Town's Utility Undergrounding Ordinance.
4. **Ratify**, the Warrant Register total of \$145,664.80 for checks dated February 23, 2012. Ratify Payroll Registers total of \$151,304.63 for checks dated February 17, 2012.

Council Member Abel moved to adopt Consent Agenda Items 1-4. Council Member Hagerman seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Member Abel, Hagerman, Huntington Lombardo, and Mayor Rowe.
NOES: None

ABSTAIN: None
ABSENT: None

DEPARTMENT REPORTS

5. Remote Caller Bingo Ordinance

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, REPEALING CHAPTER 17 OF DIVISION 1 OF TITLE 4 OF THE SAN BERNARDINO COUNTY CODE AS ADOPTED BY THE TOWN OF YUCCA VALLEY, AND ADDING CHAPTER 5.30 TO TITLE 5 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE, REGARDING TRADITIONAL AND REMOTE CALLER BINGO

Town Clerk Anderson presented the staff report in the printed agenda, advised that the recommendation is to introduce the ordinance, and read the title of the ordinance.

Council Member Abel questioned if there had been any input from other organizations that hold bingo games. Town Clerk Anderson advised there has not.

Council Member Lombardo commented this ordinance allows organizations to join in on games with other organizations with a central caller.

Council Member Huntington commented the remote caller bingo has the same checks and balances as regular bingo games.

Council Member Hagerman moved to introduce the Ordinance of the Town Council of the Town of Yucca Valley, California, repealing Chapter 17 of Division 1 of Title 4 of the San Bernardino County Code as adopted by the Town of Yucca Valley, and adding Chapter 5.30 to Title 5 of the Town of Yucca Valley Municipal Code regarding Traditional and Remote Caller Bingo. Council Member Lombardo seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Member Abel, Hagerman, Huntington Lombardo, and Mayor Rowe.
NOES: None
ABSTAIN: None
ABSENT: None

POLICY DISCUSSION

6. Sign Ordinance Enforcement, Temporary Signs, Banners & Flags for Commercial & Industrial Enterprises, Joint Town Council & Planning Commission, Sign Ordinance Review.

Deputy Town Manager Stueckle gave staff report in the printed agenda and displayed a PowerPoint presentation during the discussion. In January 2010 and February 2011 the Council approved the suspension of the time period limitations for temporary signs for commercial and industrial establishments for a period of one year ending February 1, 2012. Based upon prior Town Council action temporary sign permit application and fees are required to be submitted and approved. Staff is recommending that the Council allow temporary banners, flags, b-wings, pennants, hulas and streamers to remain in place for a period of one year ending on March 6, 2013, or until further action by the Town Council.

One item not discussed in the staff report, but staff felt it is an important issue is the fact that at the time of adoption of the sign ordinance, the then Town Council elected to not include an amortization schedule, and instead enacted other standards to eliminate non-conforming signs. One such standard states that the installation of one new sign requires that all signs be brought into conformance with the sign ordinance. Staff recommends temporary suspension of Section 87.07170c8 to allow for new signs, conforming to current standards, without the requirement to bring all signs into compliance with existing code.

With regard to civic community events, Section 87.071302 allows temporary signage for civic community events and Section c allows for banners to be placed at the Town's entryway on SR 62, however, there may be benefits to the business community and the Town from expanding this section to allow additional locations for temporary signage for civic community events.

Jennifer Collins, representing the Chamber of Commerce, spoke in favor of the recommendations and noted, when it comes to special events signage is important.

Ramon Mendoza, Yucca Valley, spoke in support of doing whatever we can for businesses, but recommended communication with Caltrans regarding use of their right-of-way for special event signage. He also expressed concern about allowing balloons that may endanger the desert tortoise.

Curt Duffy, Yucca Valley, encouraged a close look at the signage policy and the use of best practices from other communities.

Council Member Huntington questioned if the Town is issuing permits and collecting fees for the temporary signage, and if staff has found the temporary suspension manageable. Deputy Town Manager Stueckle advised that businesses are being informed that they still need permits and to pay the fees for temporary signage. He noted that the flow is manageable but advised there has been a continued proliferation of b-wings on the highway. Council Member Huntington commented he is not opposed

to allowing the suspension to go on for another year or until it is addressed by the Council.

Council Member Lombardo questioned if damaged signs will be replaced. Deputy Town Manager Stueckle advised the business is still required to keep them in good order. Town Manager Nuaimi added that ordinances are only as good as the enforcement behind them, noting we do not have a shortage of compliance complaints, and it will require some continued focus on our part if we see the signs deteriorating.

Deputy Town Manager Stueckle corrected his previous statement noting that, during the first year of the temporary sign suspension, the Council waived the time period but did not waive the fees. In the second year the fees were waived, but the permit was still required. He noted that staff is not recommending that the waiver of fees continue today.

Council Member Huntington advised he agrees with the recommendation to direct staff to evaluate the potential for additional community event and economic development sign standards.

Council Member Lombardo suggested adding special event signs on SR 247 also. Deputy Town Manager Stueckle advised that at this time we have signs on the east and west ends of Town, but that should include the center of town as well as SR 247.

Council Member Huntington suggested that one other element with the economic development sign standards might be a kiosk type sign listing off highway businesses. Deputy Town Manager Stueckle stated that would need to be looked at with review of the sign code. What we are recommending at this time is related to Town sponsored economic development activities.

Council Member Hagerman questioned if the sign flippers have to file a permit. Town Manager Nuaimi advised that typically those sign flippers are mobile, and can cause a distraction. He is not aware of permitting requirements, but they do become a public safety issue.

Council Member Abel commented that will be something decided as we go through the ordinance, noting he is in favor of postponing discussion on that issue until we have public input etc.

Deputy Town Manager Stueckle advised that staff added one item not included in the staff report regarding suspension of section 87.07170c8 for a period of one year until March 6, 2013. Council Member Huntington commented that is extremely fair. Council agreed.

Council Member Huntington commented he is against a joint meeting on this issue, noting it becomes difficult to get 10 members together at one time, and the ordinance is pretty well put together except for specificity on some events. It should be sufficient for the Planning Commission to hold a public hearing, address those issues, and come up with a recommendation specific to the part of the code that needs to be addressed. He does not think a joint meeting would be fruitful.

Council Member Lombardo commented he would like to see more public input from business owners. The sign ordinance is complicated and important to businesses, and he would like to hear what other business people have to say about it.

Council Member Abel questioned what the thought process was of a joint meeting rather than just the Planning Commission then the Town Council looking at it. Deputy Town Manager Stueckle advised the primary issue is the fact that the sign ordinance was an optional task included within the Development Code update. That document is getting ready to complete staff internal review over the next several months and will be brought forward to hearing. As many opinions as will be expressed on the sign code from each hearing, staff felt it would be best to start with a joint meeting of the two bodies to give some policy guidance so that we don't walk in the door with something that is acceptable to the Planning Commission but not at all to the Town Council.

Council Member Hagerman stated he is in favor of a joint meeting.

Mayor Rowe stated she is also in favor of a joint meeting, and requested that the Chamber and their Subcommittee be involved to exhaust all those issues the chamber has as well.

Council Member Huntington Stated he would like to see issues and corrective actions identified and suggested that the Planning Commission hold a public hearing before a joint meeting to allow additional input to be brought to that meeting.

Council Member Hagerman moved to suspend temporary sign permit time limitations established for temporary commercial and industrial signs as established in Section 87.07130(c) for a period of one year ending on March 6, 2013, or until further acted upon by the Town Council; and Suspend Section 87.07170c8 for a period of one year, ending on March 6, 2013, or until further acted upon by the Town Council; Direct staff to evaluate the potential for additional community event and economic development sign standards; and direct staff to schedule a Planning Commission Public Hearing to allow additional input to be brought before a joint meeting between the Town Council and Commission. Council Member Lombardo seconded. Motion carried 5-0 on a voice vote.

FUTURE AGENDA ITEMS

PUBLIC COMMENT

Margo Sturges, Yucca Valley, commented regarding the use of CDBG funds for a splash pad at the community center.

Jeff Bullen, Yucca Valley, commented regarding energy savings for the Parks and Recreation Department.

STAFF REPORTS AND COMMENTS

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

7. Council Member Huntington

None

8. Council Member Lombardo

Thanked the public speakers.

9. Council Member Abel

Advised that Yucca Valley Elementary School will be having a dinner and open house on Saturday, March 31st from 4:30 to 8:00 p.m. and would like RSVP's for the event.

Reported regarding attendance at the Mojave Air Quality Management District meeting where he was sworn in and met members of the other communities.

Advised that AARP is offering seniors assistance for tax preparation at little to no cost at St. Mary's Church.

10. Mayor Pro Tem Hagerman

None

11. Mayor Rowe

None

Mayor Rowe recessed the meeting to the Successor Agency of the Yucca Valley RDA at 6:50 p.m., reconvened the Town Council at 7:15 p.m. and adjourned to Closed Session.

CLOSED SESSION

12. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

The legislative body is deciding whether or not to initiate litigation pursuant to Government Code Section 54956.9(c). (1 case)

Mayor Rowe adjourned the meeting to Closed Session at 7:16 p.m., returned to open session at 8:01 p.m., and advised there was no reportable action taken. There were no members of the public present.

ANNOUNCEMENTS

Next Town Council Meeting, Tuesday, March 20, 2012, 6:00 p.m.

ADJOURNMENT

There being no further business the meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Jamie Anderson, MMC
Town Clerk



TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Director of Administrative Services
Date: March 13, 2012
For Council Meeting: March 20th, 2012

Subject: AB1234 Reporting Requirements

Prior Council Review: Current reimbursement policy for Council members and Redevelopment Agency members reviewed and approved by Council August 2006.

Recommendation: Receive and file the AB1234 Reporting Requirement Schedule for the month of February 2012.

Order of Procedure:

- Request Staff Report
Request Public Comment
Council Discussion / Questions of Staff
Motion/Second
Discussion on Motion
Roll Call Vote

Discussion: AB1234 requires members of a legislative body to report on "meetings" attended at public expense at the next meeting of the legislative body. "Meetings" for purpose of this section are tied to the Brown Act meaning of the term: any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains. Qualifying expenses include reimbursement to the member related to meals, lodging, and travel.

An example of when a report is required is when a Town Council member represents his or her agency on a joint powers agency board and the Town pays for the official's expenses in serving in that representative capacity. Additionally, in the spirit of AB1234, the Yucca Valley Town Council also reports all travel related to conference and training attended at public expense.

Although the AB1234 report can be either written or oral, this report must be made at the next meeting of the legislative body that paid for its member to attend the meeting.

Reviewed By: [Signature] Town Manager, [Signature] Town Attorney, [Signature] Admin Services, [Signature] Dept Head

Department Report, Ordinance Action, Resolution Action, Public Hearing, X Consent, Minute Action, X Receive and File, Study Session

Alternatives: None.

Fiscal impact: There is no anticipated financial impact associated with the recommended approval of AB1234 reporting requirements.

Attachments: AB1234 Reporting Requirement Schedule

Town of Yucca Valley

Councilmember AB1234 Meetings Schedule Month of February 2012

Name	Organization	Description	Location
Mayor Rowe		No Reportable Meetings	
Mayor Pro Tem Hagerman		No Reportable Meetings	
Councilmember Abel		No Reportable Meetings	
Councilmember Huntington		No Reportable Meetings	
Councilmember Lombardo		No Reportable Meetings	



**SAN BERNARDINO COUNTY FIRE DEPARTMENT
SERVING YUCCA VALLEY**

February 2012 Summary

ADMINISTRATIVE MONTHLY REPORT

The County Fire Department responded to a total of 342 requests for assistance within our town boundaries. Division wide responses for the South Desert total in the Month of February were 590 incidents.

EMERGENCY RESPONSES

ESTIMATED FIRE LOSS (In dollars)

Total Loss	\$	131,000	Value	\$	250,000
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RESPONSES OTHER THAN FIRES

Fires	9
Rupture / Explosion	0
EMS / Rescue	261
Hazardous Condition	3
Service Calls	28
Good Intent Calls	28
False Call	13
Other	0

ALARMS – ALL TYPES

Yucca Valley Response Area

TOTAL NON-FIRE RESPONSE	333
TOTAL FIRE RESPONSES	9
TOTAL ALARMS.....	342

Significant Events:

- Started 1st CERT Class of 2012 – 24 participants. Town of Yucca offered MaChirs Parks for the instruction. Morongo Basin CERT very appreciative for their contributed support of the program.
- Crews trained in Low Angle Rope Rescue Operations (LARRO). This training is essential to rescuing victims in over-the-side falls, accidents resulting from falls, vehicular accidents, etc.
- Fire loss incidents included 5 structure fires involving fixed and mobile property used as primary residents. Occupant displacement was handled by Red Cross and individual family assistance.

March

FIRE DOT'S



Poison Prevention Week March 15-21, 2009

SOME FACTS...

- More than 2 million poisonings are reported annually.
- 90% of poisonings occur at home.
- Most non-fatal poisonings occur in children under 6 years old.
- On average a poison exposure happens every 14 seconds.



Common Poisons:

- Medications
- Vitamins
- Cleaning Products
- Laundry Products
- Nail glue/remover/paint
- Primer
- Lighter Fluids
- Batteries
- Bug killers: spray, stakes,
- Cigarettes and Tobacco
- Alcohol (any kind)
- Weed killer
- Mouthwash
- Plants (some are toxic if eaten)



TIPS TO PREVENT ACCIDENTAL POISONINGS

- ⊙ Keep medicines, cleaning products, & other possibly harmful products in their original containers with labels.
- ⊙ Lock medicines, cleaning products, & other possibly harmful products where children cannot see or reach them.
- ⊙ Always use child-resistant packaging and remember to replace the caps tightly.
- ⊙ When taking or giving any medication read the label carefully everytime.
- ⊙ Use household products exactly as the label says & never mix any. You can unknowingly create toxic gases.
- ⊙ Install a carbon monoxide alarm.
- ⊙ If medications are kept in your purse or briefcase be sure to keep them out of reach from children.
- ⊙ **NEVER** refer to medications as candy!
- ⊙ If an adult is taking medication try to do it privately where children cannot watch. Children tend to imitate adults around them.
- ⊙ If using cleaning products or other possibly harmful products and you need to step away take the product or your children with you. It only takes a second for a tragedy to happen.
- ⊙ When visiting another home be sure it is poison-proofed as well.
- ⊙ Keep the poison center number by every phone:



1-800-222-1222



Firefighters, emergency vehicles, and other responding personnel need to find your home if an emergency occurs. If the numbers on your home are not clearly visible, this can cause delays.

Residential Addressing

For rural homes or businesses, if the home or building is set back from the road, post your address at the entrance of the drive way. If there is more than one home or building on the same access road have ALL addresses posted at the driveway entrance. Make sure all address can be seen at night!

What can you do?

Install internally illuminated numbers. Make sure the numbers are at least 4" high. The numbers should be easy to read, not cursive style. When hanging the numbers put them directly on the house, garage, or apt. Also, the numbers should be clearly painted on a curb or mailbox in front of the home. To test ask visiting neighbor or friend if they could see the numbers from the street.

Other tips to keep your family safe in an emergency:

- Have a home escape plan and practice it often.
- Have working smoke alarms inside & outside of every bedroom and at the top and base of stairways, and outside the kitchen.
- CALL **9-1-1** for any emergency. Have it posted by the phone or on the refrigerator.
- Keep working flashlights by every bed in the home.
- Have an emergency preparedness kit stocked and up to date.

Nationwide, fire departments respond to a fire every 15 seconds.

ORDINANCE NO.

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, REPEALING CHAPTER 17 OF DIVISION 1 OF TITLE 4 OF THE SAN BERNARDINO COUNTY CODE AS ADOPTED BY THE TOWN OF YUCCA VALLEY, AND ADDING CHAPTER 5.30 TO TITLE 5 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE, REGARDING TRADITIONAL AND REMOTE CALLER BINGO

THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 11 of Division 1 of Title 4 of the San Bernardino County Code as adopted by the Town of Yucca Valley is hereby repealed.

Section 2. The Town Council of the Town of Yucca Valley finds as follows:

1. The Town of Yucca Valley wishes to permit traditional bingo as provided in this Ordinance and in compliance with the requirements of California Constitution Article IV, §19 and Penal Code Section 326.5; and
2. The Town of Yucca Valley wishes to permit remote caller bingo as provided in this Ordinance and in compliance with Penal Code Section 326.3.

Section 3. Chapter 5.30 of Title 5 of the Yucca Valley Municipal Code is hereby added to read in full as set forth in the attached Exhibit "A", which is incorporated by this reference.

Section 4. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have adopted this Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions could be declared invalid or unconstitutional.

Section 5. Within fifteen (15) days after its adoption, the Town Clerk shall certify to the adoption of this Ordinance and cause it to be published once in a newspaper of general circulation printed and published in the County and circulated in the Town pursuant to Section 36933 of the California Government Code.

Section 6. This Ordinance shall become effective thirty (30) days from the date of its adoption.

APPROVED AND ADOPTED this _____ day of _____, 2012

MAYOR

ATTEST:

APPROVED AS TO FORM AND CONTENT:

TOWN CLERK

TOWN ATTORNEY

Exhibit "A"

Chapter 5.30, Bingo

Section 5.30.010 – Definitions

Section 5.30.020 – Conduct of Bingo Games, Traditional and Remote-Caller

Section 5.30.030 – Additional Provisions for the Conduct of Remote Caller Bingo Games

Section 5.30.040 – Remote caller bingo authorization

Section 5.30.050 – License

Section 5.30.060 – Summary Suspension and Revocation

Section 5.30.010 – Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bingo: means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conforms to numbers or symbols selected at random.

Mobile Home Park Association: means an organization formed for the benefit of mobile home park residents which has an official name, president, and secretary and which has an address or mailbox.

Remote Caller Bingo: means bingo as defined in Penal Code Section 326.3(u)(1).

Charitable organization affiliated with a school district: means an organization formed for the benefit of a school district which has an official name, president, and secretary and which has an address or mailbox.

Senior Citizens Organization: means an organization formed for the benefit of senior citizens which has an official name, president, secretary and which has an address or mailbox.

Section 5.30.020 – Conduct of Bingo Games, Traditional and Remote-Caller

Bingo games, traditional and Remote Caller, may be conducted in the Town subject and pursuant to the following provisions, except when expressly limited to traditional (not Remote Caller) bingo games only:

- A. Bingo games shall be conducted only by organizations exempted from the payment of the bank and corporation tax by Revenue and Taxation Code §§23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, and 23701w and by charitable organizations affiliated with a school district, mobile home park associations, and senior citizens organizations, provided that the proceeds of such games are used only for charitable purposes or for reimbursement of reasonable and necessary expenses in

operating such games. Security personnel employed by the organization conducting bingo games may be paid from the revenues of bingo games as provided in subsection (J) of this section.

- B. For traditional (not Remote Caller) bingo games only, it is an infraction for any person to receive a profit, wage or salary from any bingo game authorized as provided in article IV, section 19 of the constitution of the state. Security personnel employed by the organization conducting the bingo game may be paid from the revenues of bingo games as provided in subsection (J) of this section.
- C. Violations of subsection (B) of this section shall be punishable by an administrative fine not to exceed \$10,000.00 which fine shall be deposited in the general fund of the Town. A violation of any provision of this section, other than subsection (2) of this section, is an infraction.
- D. No minor person shall be allowed to operate, work at or participate in any bingo game.
- E. A bingo game shall only be conducted on property owned or leased by an organization authorized by this section to conduct bingo games which has been in existence in the Town at least three consecutive years prior to the filing of an application for a bingo license.
- F. All bingo games shall be open to the public, not just to members of the authorized organization.
- G. A bingo game shall be operated and staffed only by members of the nonprofit, charitable organization, mobile home park association or senior citizens organization which organized it. Such members shall not receive a profit, wage or salary from any bingo game. Only the organization authorized to conduct the bingo game under this section shall operate such game or participate in the promotion, supervision or any other phase of such game.
- H. No individual, corporation, partnership or other legal entity except the organization authorized to conduct a bingo game shall hold a financial interest in the conduct of such bingo game.
- I. All profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account. The licensee shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of bingo games which are authorized by this section. The Town Auditor, in conjunction with the police department, shall have the right to examine and audit such records at any reasonable time, and the licensee shall fully cooperate with the Town by making such records

available. Such proceeds shall be used only for charitable purposes, except as described in subsection (J) of this section.

- J. All proceeds derived from a bingo game pursuant to this section:
1. May be used for prizes
 2. A portion of such proceeds, not to exceed 20 percent of the proceeds before the deduction of prizes, or \$2,000.00 per month, whichever is less, may be used for rental of property, overhead, including the purchase of bingo equipment, administrative expenses, security equipment and security personnel.
 3. Such proceeds may be used to pay license fees.
 4. If the monthly gross receipts from bingo games of an organization within this subsection exceeds \$5,000.00, a minimum percentage of the proceeds shall be used only for charitable purposes not relating to the conducting of bingo games and the balance shall be used for prizes, rental of property, overhead, administrative expenses and payment of license fees. The amount of proceeds used for rental of property, overhead, and administrative expenses is subject to the limitations specified in subsection J(2).
- K. No bingo game shall be operated until, and unless, such organization shall have received a license authorizing it to conduct a bingo game. The annual fee for such license shall be set by the Town.
- L. For traditional (not Remote Caller) bingo games only, no person shall be allowed to participate in a bingo game pursuant to this section unless the person is physically present at the time and place in which the bingo game is being conducted.
- M. For traditional (not Remote Caller) bingo games only, the total value of prizes awarded during the conduct of any bingo game shall not exceed \$500.00 in cash or kind, or both, for each separate game which is held.
- N. For traditional (not Remote Caller) bingo games only, there shall be no more than two bingo games held during any calendar week in any one location wherein a portion of the proceeds are retained by the sponsoring organization unless the proceeds retained are to be used solely to reimburse expenses as defined in subsection (10) of this section.
- O. No organization shall conduct bingo games between the hours of 11:00 p.m .and 10:00 a.m.

- P. The games shall be conducted in compliance with Penal Code § 326.5 and all other applicable state and local laws and regulations, expressly including, but not limited to, all applicable administrative and management agreements.

Section 5.30.030 – Additional Provisions for the Conduct of Remote Caller Bingo Games

Remote caller bingo games may be conducted in the Town subject and pursuant to the following provisions:

- A. Remote caller bingo games may be conducted by any organization eligible to receive a traditional bingo license pursuant to Section 5.03.020 if:
1. The organization possesses a valid traditional bingo license issued pursuant to Section 5.30.030
 2. The organization has been incorporated or in existence for three consecutive years or more; and
 3. The organization obtains approval from the Sheriff's Captain as provided in section 5.30.040.
- B. Remote caller bingo games shall be conducted in compliance with Penal Code §§ 326.3 and 326.4 and all other applicable local and state laws and regulations.
- C. Remote caller bingo games shall not be conducted by any licensee on more than two days during any week, except that a licensee may hold one additional game, at its election, in each calendar quarter.
- D. In addition to the requirements of subsection section 5.30.030 (I), the licensee shall submit copies of any state-mandated audits, including, but not limited to, those required pursuant to Penal Code § 326.3(w)(2), to the Sheriff's Captain within five (5) days of their submission to the applicable state agency.
- E. Except as authorized by Penal Code § 326.3, it is a misdemeanor for any person to receive a profit, wage or salary from any remote caller bingo game authorized as provided in article IV, section 19 of the Constitution of the State.
- F. Violations of subsection (E) of this section shall be punishable by an administrative fine not to exceed \$10,000.00 which fine shall be deposited in the general fund of the Town. A violation of any provision of this section, other than subsection (E) of this section, is a misdemeanor.

Section 5.30.040 – Remote Caller Bingo Authorization.

- A. Organizations wishing to conduct remote caller bingo shall submit a request to do so to the Town Clerk, such application may be submitted at the same time as an application for a traditional bingo license pursuant to section 5.30.050. The request

shall be accompanied by any information reasonably necessary to permit the Sheriff's Captain to determine that the proposed remote caller bingo operation and games will be conducted in compliance with this section and all other applicable state and local laws and regulations, expressly including, but not limited to all applicable administrative and management agreements.

- B. Notwithstanding anything to the contrary in subsection (a), any organization possessing a valid traditional bingo license issued pursuant to section 5.30.050 may submit a request for authorization to conduct remote caller bingo games at any time. However, such requests shall be accompanied by a nonrefundable filing fee in an amount determined by resolution of the council from time to time. The request shall also be accompanied by any information reasonably necessary to permit the Sheriff's Captain to determine that the proposed remote caller bingo operation and games will be conducted in compliance with this article and all applicable state laws and regulations.
- C. Approvals to conduct remote caller bingo issued pursuant to this section shall be valid until the end of the calendar year in which they were issued or the expiration of the traditional bingo license that the approval was incorporated into or attached to, whichever is earlier. A new approval granted creates no vested right on the part of the licensee to continue to offer remote caller bingo for play. The Town Council expressly reserves the right to amend or repeal this section at any time. If this section is repealed, all approvals granted pursuant to this article shall cease to be effective for any purpose on the effective date of the repealing legislation.
- D. In the event an organization only wishes to conduct remote caller bingo games, it shall not be required to undergo the investigations required pursuant to section 5.30.050(D) provided it obtains and maintains all necessary state licenses and registrations required by Penal Code § 326.3 and submits copies of such licenses and registrations with its application pursuant to this section. Any organization exempt from Town investigations pursuant to this subsection shall only conduct remote caller bingo games and shall not conduct traditional bingo games pursuant to section 5.30.020.

Section 5.30.050 – License

- A. The application for a license for the conduct of bingo games, whether traditional or remote caller, shall be upon a form prescribed by the Town, and shall be accompanied by written evidence of the exemption of the organization from the payment of the bank and corporation tax by applicable state law and payment of the license fee as set by resolution of the Town Council, which shall not exceed the maximum amount permitted pursuant to Penal Code § 326.5(1)(1). The following documentation shall be attached to the application, as applicable:

1. A certificate issued by the Franchise Tax Board certifying that the applicant is exempt from the payment of the taxes imposed under the Corporation Tax Law pursuant to Section 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, or 23701w of the Revenue and Taxation Code. In lieu of a certificate issued by the Franchise Tax Board, the Sheriff's Captain may refer to the Franchise Tax Board's Internet Web site to verify that the applicant is exempt from the payment of the taxes imposed under the Corporation Tax Law.
2. Other evidence as the Sheriff's Captain determines is necessary to verify that the applicant is a duly organized mobile home park association of a mobile home park situated in the Town.

The license shall not be issued until the Sheriff's Captain has verified the facts stated in the application and determined that the applicant is qualified.

- B. A license issued pursuant to this section shall be valid for one year, at which time the license shall expire. A new license shall only be obtained upon filing a new application and payment of the license fee. The fact that a license has been issued to an applicant creates no vested right on the part of the licensee to continue to offer bingo for play. The Town of Yucca Valley expressly reserves the right to amend or repeal this section at any time by ordinance or resolution. If this chapter is repealed, all licenses issued pursuant to this section shall cease to be effective for any purpose on the effective date of the repealing ordinance or resolution.
- C. Upon receipt of the completed application and the fee, the Town Clerk shall refer the application to interested departments of the Town, including but not limited to the Town Manager, Town Attorney, Planning Department and the Sheriff's Department, for investigation as to whether or not all the statements in the application are true and whether or not the property of the applicant qualifies, and the extent to which it qualifies, as property on which bingo games may lawfully be conducted.
- D. For traditional bingo only, upon receipt of an application, or whenever there is a change of officers of the organization or in the position of game manager, the Sheriff's Captain shall make an investigation regarding the character and moral fitness of applicants, the cost of which investigation shall be borne in whole or in part by the applicants in an amount set by resolution of the Town Council. This investigation shall include the obtaining of criminal history statements, through fingerprints, for all officers/board members and game manager(s) associated with the day-to-day operation of the game. The cost of this check shall be borne by the applicant as provided in Penal Code § 326.5(1)(2). The purpose of this investigation is to determine those persons who have been convicted of crimes involving lotteries, gambling, larceny, perjury, bribery, extortion, fraud or similar crimes involving moral turpitude. If any person investigated does in fact have a criminal record, or presents any cause for concern related to the community's public health, peace, safety, or welfare, such

person shall be notified in writing and the license suspended until such person is removed from the application or does not participate in bingo operations. Such person shall not, at any time in the future, be permitted to participate in any way in any bingo operation licensed under this article. Any person objecting to the Sheriff's Captain's determination pursuant to this subsection may appeal to the Town Manager or designee provided he or she files a notice of appeal with the Town Clerk within (10) days of the Captain's determination.

- E. Upon initial application, yearly renewals and change in organizational officers/board members or game managers, the Sheriff's Department shall meet with organizations holding bingo licenses to review existing laws and Town ordinances regulating bingo operations and to answer questions that may arise.
- F. Licenses are not transferable, and there are no rebates if the bingo operation licensed under this article is discontinued during the period for which the license was issued.

Section 5.30.060 – Summary Suspension and Revocation

- A. In addition to any other penalty provided by law, whenever it appears to the Sheriff's Captain that the licensee, whether of traditional or remote caller bingo, is conducting a bingo game in violation of any of the provisions of this chapter, the Sheriff's Captain shall have the authority to summarily suspend the license and order the licensee to immediately cease and desist any further operation of any bingo game.
 - 1. Any such order shall be in writing and personally served upon the licensee. any violation of this chapter shall constitute cause for the revocation of the organization's bingo license or remote caller bingo approval by the Sheriff's Captain. Any person objecting to the Sheriff's Captain's determination pursuant to this subsection may appeal to the Town Manager or designee provide he/she files a notice of appeal with the Town Clerk within ten (10) days of the Sheriff's Captain's determination.
 - 2. Any person who continues to conduct a bingo game after any summary suspension thereof under section 5.30.060(A) shall be deemed guilty of a misdemeanor.
 - 3. The order issued under section 5.30.060(A) shall also notify the licensee that it shall have five days from the date of such order to request a hearing to determine whether such license shall be revoked. Failure to request, in writing, such hearing before the Town Manager within said five-day period shall result in a revocation of the license.
 - 4. Upon such request by the licensee whose license has been suspended under section 5.30.060(A) for a hearing to determine whether such license shall be revoked, the Town Manager shall provide such hearing within ten days after receipt of such request at which hearing the suspended licensee may appear before the Town

Manager. No license shall be revoked under this section unless notice of the time and place of such hearing shall have first been given at least five days before the hearing thereof by depositing in the United States mail a notice directed to said suspended licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the suspension and revocation. The licensee shall be afforded the opportunity to present evidence why the license should not be revoked. The licensee shall be entitled to be represented by counsel.

5. At the close of the hearing, the Town Manager shall render a decision. If the Town Manager decides that the license should be revoked, a written notice thereof shall be personally served upon the licensee. Said written notice shall contain a clear and concise statement of the ground for revocation and a statement that the licensee has a right to appeal the decision to the Town Council.
 6. Any organization whose license is revoked under this section shall not conduct any bingo game in the Town until such time as the Town Council, on appeal by the licensee, determines to overrule the decision of the Town Manager.
- B. Whenever it appears to the Town Manager that the licensee is conducting bingo games in violation of any of the provisions of this division, or that the license was obtained by fraudulent representation and no summary suspension is ordered under section 5.30.060(A), the license may be revoked; provided, however, the licensee shall have the opportunity to appear at a hearing conducted by the Town Manager.
1. No license shall be revoked under this section unless written notice shall have been given at least five days before the hearing thereof by depositing in the United States mail a notice directed to said licensee at the address given in the application. The notice shall set forth a summary of the ground advanced as the basis of the revocation. The licensee shall be afforded the opportunity to present evidence why the license should not be revoked. The licensee shall be entitled to be represented by counsel.
 2. At the close of the hearing, the Town Manager shall render a decision. If the Town Manager decides that the license should be revoked, a written notice thereof shall be personally served upon the licensee. Said written notice shall contain a clear and concise statement of the ground for revocation and a statement that the licensee has a right to appeal the decision to the Town Council.
 3. Any organization whose license is revoked under this section shall not conduct any bingo game in the Town until such time as the Town Council, on appeal by the licensee, determines to overrule the decision of the Town Manager.
- C. Any licensee whose license is revoked pursuant to section 5.30.060(A) or 5.30.060(B) shall have the right, within ten days after receiving notice in writing of the revocation,

to file a written appeal to the Town Council with the Town Clerk. Such appeal shall set forth the specific ground(s) on which it is based. The Town Council shall hold a hearing on the appeal within 30 days after its receipt by the Town Clerk, or at a time thereafter agreed upon by the appellant and shall cause the appellant to be given at least ten days' written notice of such hearing. At the hearing, the appellant or its authorized representative shall have the right to present evidence and a written or oral argument, or both, in support of its appeal. The determination of the Town Council on the appeal shall be final.

- D. Any organization whose license is finally revoked may not again apply for license to conduct bingo games in the Town of Yucca Valley for a period of one year from the date of such revocation: provided, however, if the ground for revocation is cancellation of the exemption granted under Revenue and Taxation Code § 23701(d), such organization may again apply for a license upon proof of reinstatement of said exemption.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Jamie Anderson, Town Clerk
Date: March 12, 2012
For Council Meeting: March 20, 2012

Subject: Amendment Number 6 to the Morongo Basin Transit Authority (MBTA) Joint Powers Agreement (JPA) to amend Board of Supervisors Representation

Prior Council Review: None



Recommendation: Approve Amendment Number 6 to the Morongo Basin Transit Authority's Joint Powers Agreement

Summary: The Morongo Basin Transportation Agency was created in 1989 as a joint powers authority pursuant to a joint powers agreement (the "JPA") between the City of Twentynine Palms and the County of San Bernardino. The Town of Yucca Valley was subsequently added as a party to the JPA. Bylaw changes require amendment to the Joint Powers Agreement between the County, the City of Twentynine Palms and the Town.

Order of Procedure:

- Department Report**
- Request Staff Report
- Request Public Comment
- Council Questions of Staff
- Council Discussion
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call vote)

Discussion: The Morongo Basin Transit Authority (MBTA) Board passed a resolution at February meeting amending the Agency's bylaws to allow the San Bernardino County Third District to assume the First District's representation on the MBTA Board because of recent revision to the County's District boundaries. Previously the MBTA provided public transit services in both the First and Third County Supervisorial Districts, however, as a result of the 2011 redistricting, the MBTA will solely be providing public transit within the boundaries of the Third Supervisorial District. In order to accomplish this bylaw change, the Joint Powers Agreement also needs to be amended.

Reviewed By:	 Town Manager	_____ Town Attorney	 Mgmt Services	JA Dept Head
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<input type="checkbox"/> Department Report	<input type="checkbox"/> Ordinance Action	<input type="checkbox"/> Resolution Action	<input type="checkbox"/> Public Hearing
<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Minute Action	<input type="checkbox"/> Receive and File	<input type="checkbox"/> Study Session

Alternatives: none

Fiscal impact: None

Attachments: MBTA Letter
JPA Amendment



MORONGO BASIN TRANSIT AUTHORITY

Mark Nuaimi
Town of Yucca Valley
570901 Twentynine Palms Highway
Yucca Valley, California 92284

February 27, 2012

Dear Mr. Nuaimi:

The Morongo Basin Transit Authority (MBTA) Board passed a resolution at its February meeting amending our agency's bylaws to allow the San Bernardino County Third District to assume the First District's representation on the MBTA Board because of recent revision to the County's District boundaries.

Attached is amendment number 6 to the MBTA joint powers agreement. We would greatly appreciate it if your office could schedule this item for consideration and approval by the Council at the earliest opportunity. Please contact me if you have any questions on this matter.

Respectfully,

Joe G. Meer
General Manager

AMENDMENT NO. 6

TO THE JOINT POWERS AGREEMENT BETWEEN
THE COUNTY OF SAN BERNARDINO, THE
CITY OF TWENTYNINE PALMS, AND THE
TOWN OF YUCCA VALLEY CREATING THE
MORONGO BASIN TRANSIT AUTHORITY

This Amendment No. 6 is made this _____ day of _____, 2012, by the County of San Bernardino ("County"), a political subdivision of the State of California, the City of Twentynine Palms ("City"), a California municipal corporation and the Town of Yucca Valley ("Town"), a California municipal corporation, to the Joint Powers Agreement ("Agreement") between the County, City, and Town, creating the Morongo Basin Transit Authority ("MBTA").

RECITALS

WHEREAS, the County, City, and Town entered into the Agreement in order to provide a public transit system serving the Morongo Basin; and

WHEREAS, prior to the 2011 redistricting, the MBTA provided public transit services in both the First and Third County Supervisorial Districts, and as such, each of their Supervisors (or their designees) held positions on the MBTA's Governing Board; and

WHEREAS, as a result of the 2011 redistricting, the MBTA will solely be providing public transit services in the Third Supervisorial District; and

WHEREAS, the County, City, and Town now wish to amend the Agreement to update the composition of the Governing Board and specifically to reflect the changes presented by the recent redistricting; and

WHEREAS, Section 9 of the Agreement permits the Agreement to be amended at any time by the written consent of all parties to it; and

NOW, THEREFORE, the parties agree as follows:

Section 1.

Section 3(B) of the Agreement should be amended to read as follows:

The Authority shall be administered by a Governing Board of seven (7) members, each serving in an individual capacity as members of the governing board. Two (2) members and one (1) alternate shall be appointed by each city or town member (i.e., both the City and Town). Each city or town appointee or alternate shall serve at the pleasure of the City or Town Council and until his respective successor is appointed and qualified.

The County shall appoint two (2) additional members and one (1) additional alternate. One member shall consist of the Supervisor of the Third District, or his or her designee, who must be a paid full time employee of the Supervisor's staff or a resident of the unincorporated area of the County and not a resident of either the City or the Town. The second member shall be either a paid full time employee of the Supervisor's staff or a resident of the unincorporated area of the County served by the MBTA and not a resident of either the City or the Town.

The seventh member shall be a resident of the Morongo Basin and shall be selected by a majority of the other six members for a term of two years. The seventh member may be removed by a vote of five other board members.

A fifth alternate may be appointed by a majority of the Board to act in the absence of any of the seven Board members or their alternates.

The Governing Board shall be called the "Governing Board of the Morongo Basin Transit Authority." All voting power shall reside in the Governing Board.

Section 2.

This amendment shall be effective upon the execution by all parties to this amendment.

Section 3.

All other terms and conditions shall remain the same.

TOWN OF YUCCA VALLEY

MAYOR

DATE: _____

ATTEST

APPROVED AS TO FORM:

TOWN CLERK

TOWN ATTORNEY

DATE: _____

CITY OF TWENTYNINE PALMS

MAYOR

ATTEST:

TOWN CLERK

APPROVED AS TO FORM:

DATE: _____

COUNTY OF SAN BERNARDINO

ATTEST:

CLERK OF THE BOARD OF SUPERVISORS

APPROVED AS TO FORM:

COUNTY COUNSEL

DATE: _____

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Donnie Miller, Chief of Police/Sheriff's Captain
Date: March 2, 2012
For Council Meeting: March 20 or April 17, 2012

Subject: 2011/2012 OHV Grant Request

Prior Council Review: None

Recommendation: Approve a governing body resolution for the 2011/2012 OHV grant application.

Summary: The Town's Police Department has for several years received an OHV enforcement grant from the California State Parks OHMVR Division that funds OHV enforcement officers for the Town of Yucca Valley and surrounding areas. The Town Police Department is again requesting grant funding to continue with OHV enforcement and education efforts. Yucca Valley Police Department will continue to serve as the lead agency under this grant.

Order of Procedure:

- Department Report
Request Staff Report
Request Public Comment
Council Questions of Staff
Council Discussion
Motion/Second
Discussion on Motion
Call the Question (Roll Call vote)

Discussion:

Alternatives: Not approve the grant request. OHV funding from the 2010/2011 grant will run out on June 30, 2012.

Fiscal impact: None. No Town funding will be used towards this grant. Matching funds will be provided through like kind (man hour) matches.

Attachments: 2011/2012 Preliminary Grant Application

Reviewed By: [Signatures]
Town Manager, Town Attorney, Mgmt Services, Dept Head

Department Report, Ordinance Action, X Resolution Action, Public Hearing, X Consent, Minute Action, Receive and File, Study Session

RESOLUTION NO. 12-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, APPROVING THE APPLICANT TO APPLY FOR GRANT FUNDS FOR THE STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION, OFF-HIGHWAY VEHICLE GRANT FUNDS

WHEREAS, the People of the State of California have enacted the Off-Highway Motor Vehicle Recreation Act of 2003, which provides funds to the State of California and its political subdivisions for Operation and Maintenance, Restoration, Law Enforcement, and Education and Safety for off highway vehicle recreation; and

WHEREAS, the Off-Highway Motor Vehicle Recreation Division with the California Department of Parks and Recreation has been delegated the responsibility to administer the program; and

WHEREAS, procedures established by the California Department of Parks and Recreation require the Applicant's Governing Body to certify by resolution the approval of the Application to apply for Off-Highway Motor Vehicle Grant funds; and

WHEREAS, this Project appears on, or is in conformance with this jurisdiction's adopted general or master plan and is compatible with the land use plans of those jurisdictions immediately surrounding the project.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Yucca Valley hereby:

1. Approves the filing of an Application for an Off-Highway Vehicle Grant or Cooperative Agreement; and
2. Certifies that this agency understands its legal obligations to the State upon approval of the Grant; and
3. Certifies that this agency understands the California Public Resources Code requirement that Acquisition and Development Projects be maintained to specific conservation standards; and
4. Certifies that the Project will be well-maintained during its useful life; and
5. Certifies that this agency will implement the Project with diligence once funds are available and the Applicant has reviewed, understands, and agrees with the Project Agreement; and
6. Certifies that this agency will provide the required matching funds; and
7. Certifies that the public and adjacent property owners have been notified of this Project (as applicable); and
8. Appoints the Project Director as agent to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for completion of the project.

APPROVED AND ADOPTED this 20th day of March, 2012.

MAYOR

ATTEST:

TOWN CLERK

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Alex Qishta, Project Engineer
Date: March 13, 2012
For Council Meeting: March 20, 2012

Subject: State Safe Routes to School Grant Application (SR2S)
Authorization to Submit Grant Application

Prior Council Review: None

Recommendation: That the Town Council authorizes Town staff to submit a Safe Routes to School (SR2S) grant application for the March 30, 2012 grant cycle, for the following project, and directs staff to return with a budget amendment appropriating a maximum \$50,000 from Fund 516, LTF, to provide the necessary 10% match requirement, if the grant application is successful.

Sidewalks, curb and gutter on Sage Avenue, from Onaga Trail (Yucca Valley High School) to SR 62, including a pedestrian crossing at Pueblo and Sage Avenue and replacement of radar speed indicators at Yucca Elementary, Onaga Elementary and at La Contenta Middle School

Executive Summary: The California Department of Transportation has issued a call for projects for the State legislated Safe Routes to School (SR2S) Program Cycle 10 funding. The program provides funding for capital projects that improve safety for children in grades K-12 who walk or bicycle to school and through infrastructure projects that incorporate education, encouragement, and enforcement activities that are intended to change community behavior and attitudes to increase the number of children walking or bicycling to school. Applications are due to Caltrans Local Assistance Office by March 30, 2012.


Order of Procedure:

- Request Staff Report
- Request Public Comment
- Council Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote, Consent Agenda)

Reviewed By:


Town Manager

Town Attorney


Mgmt Services

Dept Head

Department Report
 Consent

Ordinance Action
 Minute Action

Resolution Action
 Receive and File

Public Hearing
 Study Session

Discussion: The SR2S Cycle 10 call for projects is currently open and closes on March 30, 2012. The SR2S program defines eligible projects in the following categories.

- Pedestrian Facilities
- Traffic Calming
- Bicycle Facilities
- Traffic Control Devices

The primary goals of the program are to reduce injuries and fatalities to school children and to encourage increased walking and bicycling amongst students. These goals are primarily implemented by constructing public improvements that improve and enhance safety for pedestrians and bicyclists who walk or bicycle to school.

The recommended grant application includes improvements at four school sites. The grant application would consist of proposed improvements on Sage, between Onaga Trail and SR 62, consisting of sidewalks, curb, and gutter. Additionally, the application will request funds to replace 6 outdated speed signs at Yucca Valley Elementary School, Onaga Elementary School, and La Contenta Middle School. The electronic components of the existing radar speed signs are outdated and replacement components are no longer available.

The following provides a preliminary estimate of probable costs for the project.

Construct 4,500 Linear feet of Curb and Gutter	\$115,000.00
Construct 25,000 square foot Sidewalk	\$200,000.00
PS&E	\$40,000.00
Environmental	\$10,000.00
Pedestrian Crossing Signal at Pubelo Trail and Sage Avenue	\$45,000.000
Replacement of outdated School speed limit indicators	\$12,000.00
Total	\$422,000.00

The Town has received letters of support for this project, requesting that the Town apply for the California Safe Route to School Grant. Staff will complete the Cycle 10 application packet which will be ready for submittal prior to the March 30, 2012 deadline, should the application be authorized.

Fiscal impact: The maximum award under the SR2S grant program is \$450,000. Applicants are required to provide a 10% match toward the improvements.

The recommended action would appropriate \$50,000 from Fund 516, LTF, to provide the necessary matching funds if the grant application is successful.

Attachments: Resolution No. 12-

RESOLUTION NO.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY CALIFORNIA AUTHORIZING THE TOWNS APPLICATION FOR A CALIFORNIA SAFE ROUTE TO SCHOOL GRANT (SR2S, 10TH CYCLE) FOR THE PURPOSE OF INSTALLING IMPROVEMENTS IN THE PUBLIC RIGHT OF WAY FOR YUCCA VALLEY HIGH SCHOOL AND FOR REPLACING RADAR SPEED SIGNS AT ONAGA ELEMENTARY, YUCCA ELEMENTARY, AND LA CONTENTA MIDDLE SCHOOLS

WHEREAS, the State of California is accepting applications under the SR2S program; and

WHEREAS, the SR2S program is developed for the purpose of reducing injuries and fatalities to school children and to encourage increased walking and bicycling amongst students; and

WHEREAS, the Town of Yucca Valley has identified the need for pedestrian safety improvements that support the goals of the SR2S program; and

WHEREAS, the project represents a continuing effort by the Town to improve pedestrian and bicycle safety for school aged children in proximity to school sites; and

WHEREAS, the Town has identified that these improvements are eligible and can be competitive for funding under the California Safe Routes to School grant program (10th Cycle); and

WHEREAS, The Town Council of the Town of Yucca Valley considers the well being and safety of children as they travel to and from schools to be a high priority.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY RESOLVES AS FOLLOWED.

Section 1: The Town Council authorizes the Town Manager to apply for a California Safe Routes to School grant (10th Cycle).

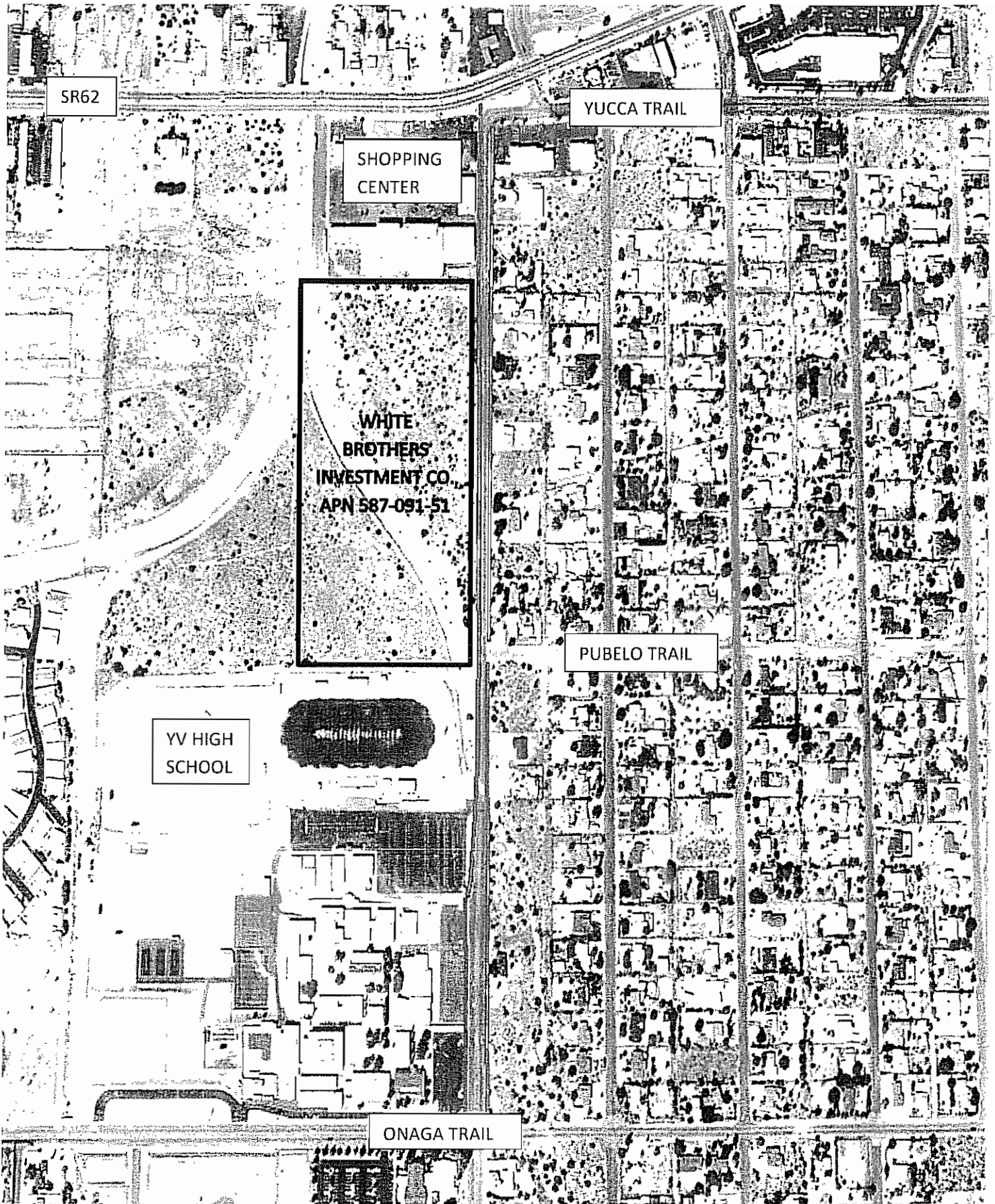
Section 2: Directs staff to return to the Town Council with a budget amendment appropriating \$50,000 from Fund 516, LTF, committing these financial resources to the project, if the Town's SR2S application is approved.

ADOPTED AND APPROVED this 20th day of March, 2012.

MAYOR

ATTEST:

TOWN CLERK



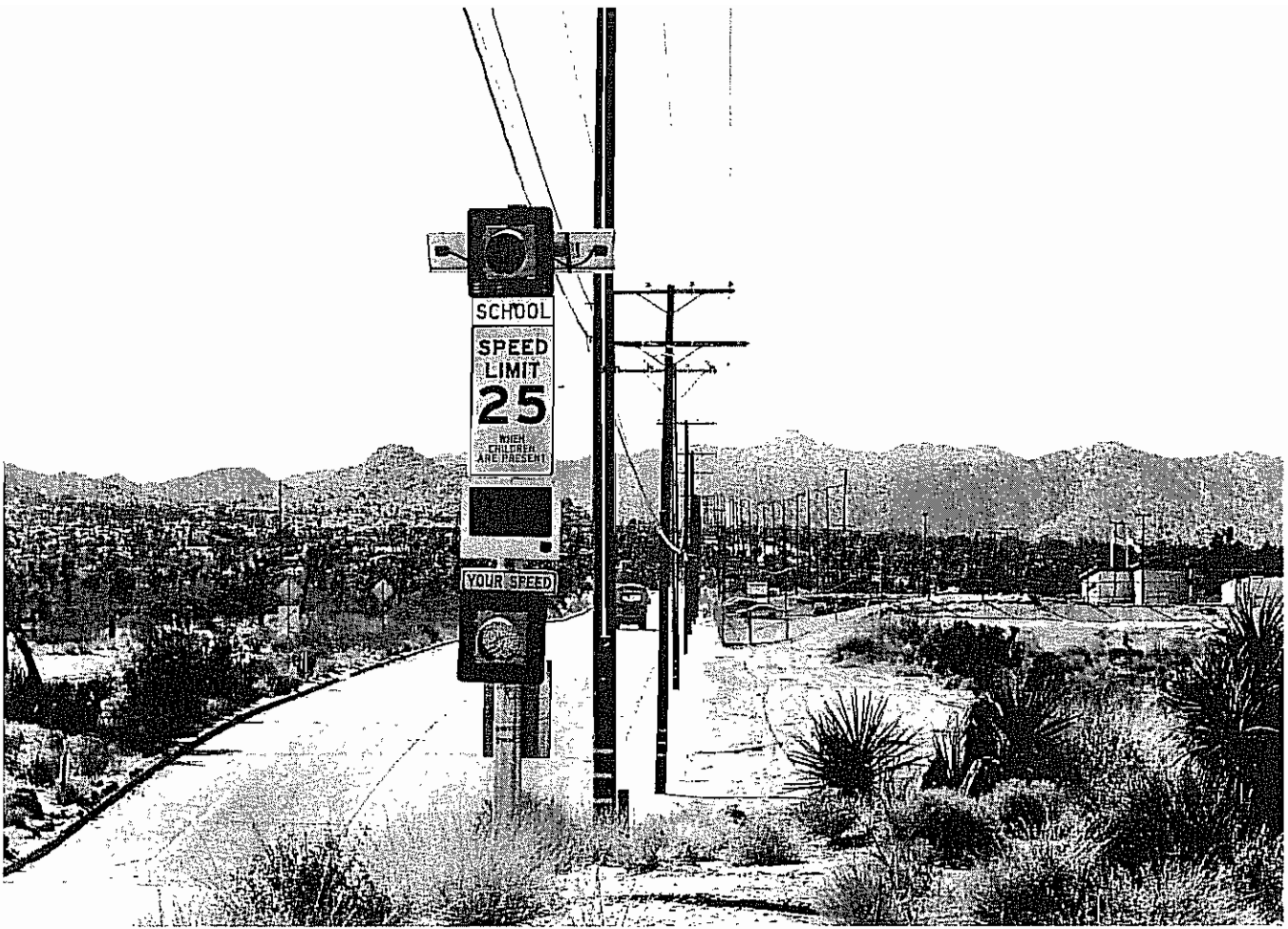
WESTSIDE OF SAGE AVENUE: Existing 590' of 48" Sidewalk
Proposed 1850'

EASTSIDE OF SAGE AVENUE: Existing 115' of 60" Sid. 3.71k
Proposed 2675'

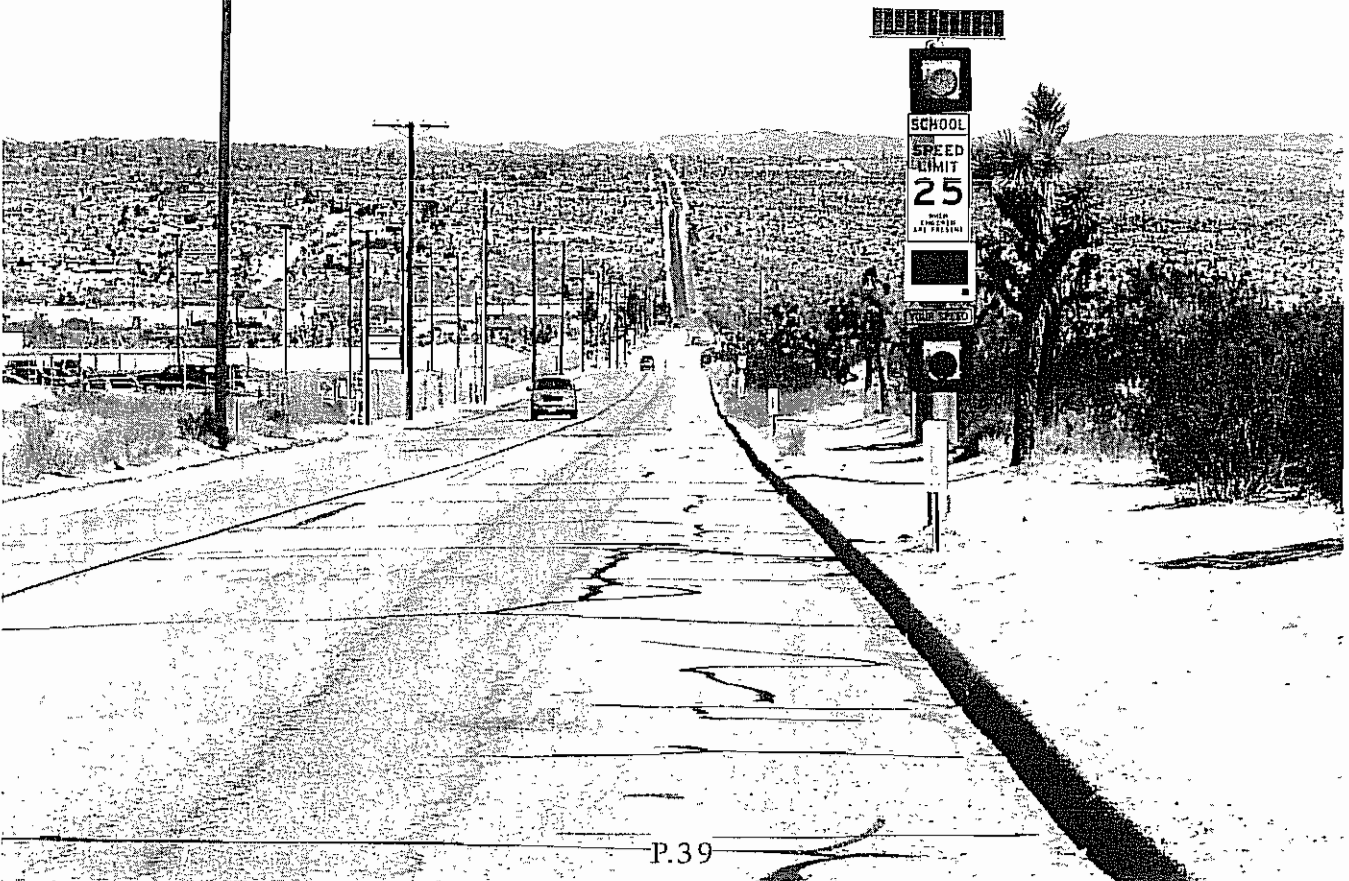


ONAGA EAST BOUND YUCCA ELEMENTARY SCHOOL





LA CONTENTA SOUTHBOUND LA CONTENTA MIDDLE SCHOOL





ONAGA WEST BOUND ONAGA ELEMENTARY SCHOOL





Yucca Valley High School

OUTCOMES THROUGH INNOVATION AND INTEGRATION



March 15, 2012

Town of Yucca Valley
Mr. Alex Qishta, Project Engineer
58928 Business Center Drive
Yucca Valley, CA 92284

RE: Safe Routes to School

Dear Mr. Qishta,

As a member of the Morongo Unified School District representing Yucca Valley High School, I offer my support to the Town of Yucca Valley in their acquisition of grant funding for the Safe Routes to Schools. Creating safer routes to our town schools should be a number one priority. I wholeheartedly support the Town's efforts to secure grant funding for any and all safety improvements in areas approaching our community's schools to assure our young students the security and protection they so deserve.

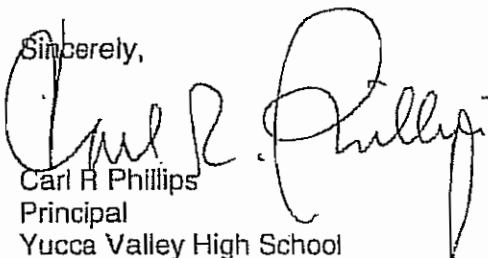
Yucca Valley is a small town with so many schools in such a small area. Families in the neighborhoods want to encourage their children to walk to school; however, the missing sidewalks have resulted in many children walking in the middle of the roadway or crossing mid-block to get to safer areas on the street.

This project is essential to our community. The Safe Routes to Schools grant would allow the Town to make upgrades that will greatly benefit our school children; as well as, all the families in the neighborhood.

It is with great pleasure and anticipation that I endorse this application and lends it support. Enhancements made possible through these grant funds would also assist our police department in enforcement efforts with regards to child safety while walking to or from their schools.

We appreciate your leadership and your efforts in this very beneficial safety project.

Sincerely,


Carl R Phillips
Principal
Yucca Valley High School

STATE-LEGISLATED SAFE ROUTES TO SCHOOL (SR2S) PROGRAM GUIDELINES

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EXHIBITS

(THE EXHIBIT IS POSTED ON THE SAFE ROUTES TO SCHOOL WEB SITE)

Exhibit	Description
A	APPLICATION FORM

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STATE-LEGISLATED SAFE ROUTES TO SCHOOL (SR2S) PROGRAM

1 INTRODUCTION

California was the first state in the country to legislate a Safe Routes to School (SR2S) program. This occurred in 1999 with the enactment of AB 1475. In 2007, AB 57 was passed which extended the program indefinitely. For more information on the legislative history of the program, go to: <http://www.leginfo.ca.gov>

Section 2333.5 of the Streets and Highways Code calls for the Department of Transportation, in consultation with the California Highway Patrol (CHP), to make grants available to local governmental agencies under the program based upon the results of a statewide competition.

The goals of the program are to reduce injuries and fatalities to school children and to encourage increased walking and bicycling among students.

The program achieves these goals by constructing facilities that enhance safety for pedestrians and bicyclists, primarily students in grades K-12 who walk or bicycle to school. By enhancing the safety of the pathways, trails, sidewalks, and crossings, the likelihood of attracting and encouraging other students to walk and bike increases.

This California SR2S program should not be confused with the federal Safe Routes to School (SRTS) program authorized under SAFETEA-LU. Although both programs have similar goals and objectives, their funding source, local funding match requirements and other program requirements are different. Please visit the Safe Routes to School web site at <http://www.dot.ca.gov/hq/LocalPrograms/saferoutes/saferoutes.htm> for additional information on the SR2S and SRTS programs.

2 ELIGIBLE APPLICANTS

The applicant, or project sponsor, is the agency that assumes responsibility and accountability for the use and expenditure of SR2S funds. The applicant must be an incorporated city or a county within the State of California. Unincorporated communities are encouraged to work closely with their local Public Works or Engineering Department in the application process.

3 FUNDING FACTS

The SR2S program is a reimbursement program. Funding is derived from the State Highway Account (SHA) in the annual budget development process. The amount of funding available in each cycle will depend on how well the program competes against all the other transportation programs funded by the SHA.

The Division of Local Assistance (DLA) at the California Department of Transportation (Caltrans) Headquarters will announce a call for projects and allocate funding to each District based on student enrollment figures obtained from the California Department of Education.

With each cycle, the DLA will establish a one or two-year project list. Districts with low student enrollment - Districts 01, 02, and 09 - will receive a minimum allocation based upon available funds. For Cycle 9, the funding will consist of one year's allocation.

The maximum reimbursement percentage for any SR2S project is ninety (90) percent. The maximum amount of SR2S funds that will be allocated to any single project is \$450,000.

If the total cost for a project exceeds \$500,000 (\$450,000 reimbursable), the applicant must fund the balance of the project cost with other funds.

Section III of the Application Form provides a table where the applicant can show funding arrangements for the project.

Requests to increase project reimbursement costs will not be granted except in unusual circumstances and subject to the availability of funds.

4 RATING FACTORS

Projects will be rated on the basis of applicant responses to weighted questions in the application which are designed to cover the following broad areas:

- (1) Identification of safety hazards and demonstrated needs of the applicant.
- (2) Potential of the proposal for reducing child injuries and fatalities.
- (3) Potential of the proposal for encouraging increased walking and bicycling among students.
- (4) Identification of current and potential walking and bicycling routes to school.
- (5) Consultation and support for projects by school-based associations, local traffic engineers, local elected officials, law enforcement agencies, school officials, and other relevant community stakeholders.
- (6) Deliverability of the project by the applicant.

Scoring rubrics will accompany each of the questions to help both the applicant and evaluator determine the adequacy of responses. Other general factors include: consistent with the communities' general plan, practicality of the proposed project, completeness, accuracy, funding history, and past project implementation performance.

5 ELIGIBLE PROJECT COMPONENTS

The SR2S program funds construction projects to improve the safety of students who walk or bike to school. Improvements must be made on public property.

Incidental costs are eligible for reimbursement up to a total of 10% of project cost.

Examples of such costs are:

- Costs for programs or activities related to education, enforcement or encouragement activities.
- Construction improvements on public school grounds consistent with the scope of the project.

A SR2S project can have several components. The following categories of work identify components that are eligible for reimbursement. Notations are made on components where eligibility could be questionable. When in doubt, contact your Caltrans District Local Assistance Engineer (DLAE). For names and contact information, go to: <http://www.dot.ca.gov/hq/LocalPrograms/dlae.htm>

Pedestrian facilities: Includes new sidewalks, sidewalk widening, sidewalk gap closures, curbs, gutters, and curb ramps. Also includes new pedestrian trails, paths and pedestrian over- and under-crossings. Because all pedestrian projects must comply with the Americans with Disabilities Act (ADA), the city/county must obtain project approval from the State Architect. Refer to **ADA REQUIREMENTS** in Section 8 below.

Note: Sidewalk repairs are ineligible. Applicants that propose sidewalk repairs will need to explain why the procedures contained in Streets and Highways Code Section 5611 cannot be exercised to repair the sidewalk. This section allows municipalities to instruct property owners to repair sidewalks on, or fronting, their property.

Traffic calming: Includes roundabouts, bulb-outs, speed humps, raised crosswalks, raised intersections, median refuges, narrowed traffic lanes, lane reductions, full- or half-street closures, and other speed reduction techniques.

Note: Improvements to pick-up and drop-off areas are ineligible. The goal of this program is to encourage students to walk and bicycle to school. Exceptions may be granted if the project increases walking and bicycling by students and reduces the exposure of students to vehicles using a pick-up/drop-off area.

Traffic control devices: Includes new or upgraded traffic signals, crosswalks, pavement markings, traffic signs, traffic stripes, in-roadway crosswalk lights, flashing beacons, bicycle-sensitive signal actuation devices, pedestrian countdown signals, vehicle speed feedback signs, pedestrian activated signal upgrades, and all other pedestrian- and bicycle-related traffic control devices.

Note: Applications that include traffic control devices that require minimum ‘warrants’ to be satisfied prior to their installation must attach the warrant sheets to the application. Traffic control devices that are not included in the most current *California Manual on Uniform Traffic Control Devices* (California MUTCD) will not be approved for installation unless the applicant follows the processes described below under “Use of Experimental Traffic Control Devices”.

Bicycle facilities: Includes new or upgraded bikeways, trails, paths, geometric improvements, shoulder widening, and bicycle parking facilities, racks and lockers.

Note: Pavement repairs and rehabilitation of traffic lanes are ineligible.

Public Outreach and Education/Encouragement/Enforcement: These activities may include, but are not limited to: installing bicycle racks/lockers on school grounds, preparing and distributing safety and health awareness materials, coordinating “walking school bus” efforts, developing education programs for school personnel, students, parents, and other partners and stakeholders, etc.

Note: Compensation for crossing guards is ineligible.

General note regarding all categories: Ineligible project components may be included in the project scope as long as they are identified by the applicant on the drawings and listed in the Engineer’s Estimate as non-participating items. If you have questions about the eligibility of components in your project, contact your Caltrans DLAE.

USE OF EXPERIMENTAL TRAFFIC CONTROL DEVICES

Applicants that propose to install an experimental traffic control device on a public roadway must follow the process prescribed in Section 1A.10 of the California Manual of Uniform Traffic Control Devices (MUTCD). Go to <http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/index.htm> for more information.

6 ELIGIBLE PROJECT IMPLEMENTATION ACTIVITIES

Project implementation activities that are eligible for reimbursement include:

- Preliminary engineering:
 - Environmental clearance
 - Preparation of Plans, Specifications and Estimate (PS&E)
- Right-of-way:
 - Engineering
 - Appraisals and acquisition
 - Utilities
- Construction:
 - Construction costs
 - Construction engineering
- Outreach and Public education/encouragement/enforcement

7 SCHOOL CLOSURES

In the event that a school(s) included in an approved project is closed by the School District, notification must be made to the DLAE within three months of the school(s) closure. The funds will not be transferred to another project and the funds will be disencumbered. If school(s) targeted for closure are among multiple schools identified in a project, a revised application must be submitted for the determination of continued funding. The amount of funding to remain encumbered on the project will be determined on a case-by-case basis.

8 DESIGN STANDARDS

All bikeway projects shall be designed in accordance with the Caltrans *Highway Design Manual* and the California (MUTCD). Exceptions to these standards will be handled in accordance with the exception approval process described in each manual. All other projects shall be designed in accordance with the appropriate design standards applicable to the type and location of the improvement.

Chapter 11, "Design Standards" of the *Local Assistance Procedures Manual* (LAPM) describes statewide design standards, specifications, procedures, guides, and references that are acceptable in the geometric, drainage, and structural design of Local Assistance projects. The chapter also describes design exception approval procedures. These standards and procedures shall be used for all SR2S projects.

AMERICANS WITH DISABILITIES ACT REQUIREMENTS

All projects will be subject to meeting the requirements of the Americans with Disabilities Act of 1990 (ADA). For more information on ADA compliance, please refer to Chapter 11, "Design Standards," of the LAPM, or go to the Division of Local Assistance web site at: http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#ADA.

The California Division of State Architect (DSA) promulgates regulations and building standards which generally prescribe a standard of accessibility or usability equal to, or greater than those provided by the Accessibility Guidelines prepared by the Federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336). The Division of the State Architect's (DSA) web site, which includes a current publication of "*DSA's California Access Compliance Manual*", is located at: <http://www.dsa.dgs.ca.gov/>.

Local agency plans and specifications with pedestrian facilities to be constructed with State funds must be reviewed and approved by DSA. The local agency will obtain DSA approval of the plans and specifications, and pay fees directly to DSA. DSA also uses Plan Review consultants, that have been trained and are under contract to DSA, to certify that the plans and specifications are in full compliance with current ADA standards. DSA can be contacted for the names, telephone numbers, etc, of their Senior Architects in the appropriate Regional Offices at the above mentioned web site.

9 APPLICATION FORM INSTRUCTIONS

The Application Form (Exhibit A – available on the SR2S web site) must be completed in its entirety. It must not exceed thirty one-sided pages in length. Exceptions may be made for applications in large urban areas involving a large number of schools. It must be bound only by a staple in the upper left hand corner and must not have a separate cover.

Applications (the original plus one color copy) must be received in the appropriate Caltrans District Office by close of business or postmarked on the established due date.

Any maps, schematics, drawings or letters of support that are attached to the application should be made on 8-½” x 11” paper. If this is not reasonable, the attachment must be folded to meet those dimensions.

Graphics may be embedded in the Application Form only for the purpose of providing the reader with a better feel for the project. Application Forms with embedded graphics must still adhere to the thirty page limit. Photos and other visuals should be included only as attachments.

Sections I, II and III of the Application Form request basic information on the applicant, the project location, the proposed improvements and their costs. The editable fields are formatted to allow a limited number of characters on each line.

Section II requests the applicant to identify the school(s) by county-district-school (CDS) code, for information, go to: <http://www.cde.ca.gov/ds/si/ds/>. It is critical that the physical street address of the school(s)/school district(s) along with zip code be furnished for each school listed in the application. This information is necessary when notifying State Legislators of successful projects within their districts. If the limited space is insufficient to identify all of the schools involved, attach a list to the application in the table format provided.

The applicant must provide information regarding student enrollment and the percentage of children eligible in the free and reduced price lunch program.

The applicant must describe the project and its location relative to the school(s). These descriptions are limited to three lines of text.

The applicant must indicate the number of applications being submitted for review. If more than one application is being submitted, the priority of each application must be provided. The project review committees will take the priorities into account when rating applications, but the priority assigned by the applicant does not guarantee a higher-ranked application being funded before a lower-ranked application.

Section III requires the applicant to include cost estimates for all phases of the project.

The applicant must decide if the project review committee can reduce the scope and the cost of a project if it contains ineligible or ineffective components.

Section IV requires the applicant to estimate completion dates for major milestones.

Section V contains six questions the applicant must answer in essay form. There are no limits to the response lengths of any single question, but no more than 12 pages should be used to answer all six questions.

The applicant should enlist the assistance of partners in the development and submittal of an SR2S project i.e. school boards, school districts, elected officials, health and safety officials, community groups, students, and various city, county, and state agencies. The applicant's success in collaborating with partners in developing a comprehensive and unified solution to bicycle/pedestrian safety problems will be taken into account as a general rating factor.

It is advised that applicants submit not more than three project applications. Applicants should prioritize candidate projects and focus on preparing excellent applications for the most deserving schools. It is rare when any single local agency receives funding for more than one project in a single funding cycle. Exceptions to this rule might apply to the few local agencies and counties with large unincorporated areas in the state that have hundreds of schools under their jurisdiction.

Applicants are encouraged to attach supporting documentation. Applications that do not contain the suggested attachments are not likely to receive high rankings by project review committees. Applicants should attach a general map, a site plan, some photographs, a detailed estimate, and letters of support. When available, attach an incident or crash summary table and collision diagram.

When preparing the Detailed Engineer's Estimate, download the document provided on the SR2S web site, or create your own spreadsheet with identical information. The construction costs tabulated in the detailed engineer's estimate should equal the construction costs shown in Section III.

Section VI requires the City Engineer or Public Works Director or designee sign the application to certify that the project is viable from an engineering perspective, and to agree to operate/maintain the facility once it is constructed. The School Principal, Official, or designee is also required to sign the application to certify that the school supports the project and that there are no schools targeted for closure in the project. Applications submitted without appropriate signatures will be disqualified from review.

If the SR2S project proposes improvements on a freeway or a state highway that affects the safety or operations of the facility, the application must be reviewed and approved by the Caltrans District Traffic Office.

If the SR2S project encompasses a freeway, state highway or county road where the CHP has enforcement authority, the application must be approved, and signed, by the CHP. It is recommended that all other projects be endorsed by the local law enforcement agency.

10 PROJECT SELECTION PROCESS

Funds will be apportioned to each Caltrans District on the basis of student enrollment. Due to the small population of students enrolled in schools in Districts 01, 02, and 09, those districts will receive \$500,000 for Cycle 9. Two (2) copies of each application must be submitted to the DLAE on or before the due date. Those postmarked on the due date are acceptable. The DLAE will assemble a District Project Selection Committee comprised of Caltrans engineers and planners, CHP, law enforcement officers, and any other interested local/regional stakeholders to score and select projects up to their funding limit. Districts will submit their project list along with a hard copy of each selected application to the Safe Routes to School Coordinator at Caltrans Headquarters. A Division of Local Assistance (DLA) team will validate District selections in terms of project eligibility, cost, scope, delivery; and compile a statewide recommended project list for Director approval. The DLA will play a strong oversight role during this process to ensure consistency and uniformity among all Districts.

All local agencies that submitted applications will be notified of the results by the DLAE. The approved project list will be posted on the SR2S website at: www.dot.ca.gov/hq/LocalPrograms/saferoutes/saferoutes.htm

11 PROJECT DELIVERY AND MONITORING

The status of all projects will be monitored by the DLA. The DLA will track the following delivery milestones:

- Project Funds Encumbered within 6 months of Approved Project List
- Award of Construction Contract within 2 years of Encumbered Funds
- Close-out of Project within 2 years of Award of Construction Contract

A quarterly report showing the delivery performance of each project will be posted at: http://www.dot.ca.gov/hq/LocalPrograms/HSIP/delivery_status.htm

Projects that are on or ahead of schedule will be identified with a green checkmark. Projects that are behind schedule will be identified with a red flag. Red flags will be removed in later reports after the agency has completed the milestone.

Caltrans will not accept SR2S applications from agencies in responsible charge of projects with red flags on the current quarterly report at the time of application for future cycles of the SR2S Program.

Invoices for payment must be submitted at a minimum every six (6) months in order for a project to be considered active.

Local agencies should refer to the General Guide for Implementing State-funded Safe Routes to School Projects posted on the SR2S website at: http://www.dot.ca.gov/hq/LocalPrograms/saferoutes/documents/Rev_SR2S_Implementation_Instructions3.doc

12 EVALUATIONS

Successful applicants may be asked to conduct a before/after study or they may be asked to provide data to other researchers who are evaluating the program's effectiveness. Successful applicants should assist researchers when asked to do so. Safety deficiencies that are corrected by this program may justify continued or increased funding in future budgets.

13 REFERENCES

California Streets and Highways Code, Sections 890-894 and 2330-2334
Caltrans *Local Assistance Program Guidelines*
Caltrans *Local Assistance Procedures Manual*
Caltrans *Highway Design Manual*
California MUTCD
AASHTO: *A Policy on Geometric Design of Highways and Streets*
AASHTO: *Highway Safety Manual*

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Council
From: Robert Kirschmann, Associate Planner
Date: February 27, 2012
For Council Meeting: March 20, 2012

Subject: 2011 General Plan Annual Review
Annual Housing Element Report

Prior Council Review: This report is reviewed annually by the Town Council.

Recommendation: That the Town Council receives and files the General Plan 2011 Annual Report.

Executive Summary Government Code Section 65400 mandates that all cities and counties submit to their legislative bodies an annual report on the status of the General Plan and progress on its implementation and that the report then be filed with the State's Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD). This annual review addresses January 1, 2011 through December 31, 2011.

Order of Procedure:

- Request Staff Report
- Request Public Comment
- Council Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote, Consent Agenda)

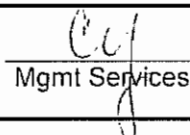
Discussion: The General Plan was adopted by the Town on December 14, 1995. The implementation section of the General Plan recommends the Town review the General Plan on an annual basis to evaluate implementation progress and to determine if changing conditions make minor adjustments to the Plan desirable.

The attached Annual Report addresses the Land Use and Housing Elements. In each section, there is a discussion that explains the progress the Town has made on its implementation of the General Plan in the past year. In accordance with State requirements, Housing Element implementation is quantified.

Reviewed By:


Town Manager

Town Attorney


Mgmt Services

Dept Head

____ Department Report
 Consent

____ Ordinance Action
 Minute Action

P.53

____ Resolution Action
____ Receive and File

____ Public Hearing
____ Study Session

Included with the report are the Annual Element Progress Report and Housing Element Implementation. There are several tables (Table A, A2, A3, B and C) required to be completed and submitted to the State. Tables A and A2 do not apply for this review period as there were no units constructed, rehabilitated, or acquired which restricted the units to specific income levels. Due to the absence of the restrictions all units constructed are required by the state to be counted towards the "above moderate" income range and are reported in table A3. Table B demonstrates the number of units constructed during the current Regional Housing Needs Allocation (RHNA) Planning period. Table C is an evaluation of each Program in the Housing element and the status of the implementation of that program.

Alternatives: N/A

Fiscal impact: None, other than staff time

Attachments:

1. Annual Report
2. Tables A,B, C as required by the State
3. General Plan Land Uses Table



2011 GENERAL PLAN ANNUAL REVIEW

BACKGROUND:

Each year, the Town of Yucca Valley reviews the development activity during the prior year and other programs that worked toward implementing the Town's General Plan. As a major component of this review, the residential development activity is reviewed to determine the number and type of dwelling units completed during the year, in order to comply with the State of California mandate to monitor the implementation of the Town's housing goals.

The Town of Yucca Valley Comprehensive General Plan is an official document that is adopted by the Town Council after significant public input and a recommendation for adoption by the Planning Commission. The General Plan provides goals, policies, programs, and implementation strategies to guide development and redevelopment, and to preserve valued assets and resources.

Land Use Planning is mandated by the State of California, and has multiple components including long-range or comprehensive planning, current planning or development review, and environmental compliance with the California Environmental Quality Act. Land Use Planning processes are regulated by California law.

State law mandates that specific components are addressed within any comprehensive plan. These are termed "Plan Elements". The required Plan elements include:

Land Use	Open Space
Circulation	Noise
Housing	Safety
Conservation	

The Town's General Plan addresses all of these components and other local considerations. It should be noted that the Housing Element must be updated every eight years. The current Housing Element for the Town was approved by the Town Council on September 15, 2009.

State Law permits the General Plan to be amended up to four times per year. The Town has approved seventeen General Plan Amendments since incorporation. Two were approved prior to the adoption of the current General Plan.

General Plans are dynamic documents, and need to be evaluated in terms of changing views, desires, strategies, and overall effectiveness on a regular basis. It has been noted by the State office of Planning and Research that the Town of Yucca Valley has not completely revised the General Plan, in its entirety, in more than 10 years. This information is provided to the Attorney General of the State of California; but it does not mean that the Plan is out of date or ineffective.

The Town Council authorized a comprehensive General Plan update in February of 2011. The Town and the selected consultant, The Planning Center, have been working over the last year on this important update. Several public outreach meetings have been held to start soliciting input from the citizens. "Open Town Hall" has been launched to help engage citizens that may not be able to attend public meetings. A community profile has been created and is available for viewing and purchase on our website. You may visit our website for the latest information at: <http://www.yucca-valley.org/departments/gpu.html>

The Development Code and other regulations play a critical role in implementing the goals, policies, and programs of the General Plan; Specific Plans provide more detailed goals, policies and programs for a more limited, specifically-defined area within the Town's corporate limits.

On May 26, 2009 the Town Council authorized Staff to proceed with a Development Code Update. This process is ongoing and a draft staff review is expected in February 2012.

This report does not discuss every component of each element, but it gives insight into general land use activity, some required elements of local consideration, and overall General Plan implementation.

GENERAL LAND USE ACTIVITY

The following were major projects submitted and approved during 2011 calendar year:

T-Mobile- Hutchins, CUP 01-11 - Submitted on March 09, 2011, this project consists of a roof mounted cellular tower consisting of nine panel antennas, 6TMA antennas and 2 GPS antennas completely screened behind an extended parapet wall with four (4) equipment cabinets on the ground behind a block wall encompassing approximately 290 square feet. The project is located at Hutchins Motorsports 58325 29 Palms Highway, and is identified as APN 601-412-22.

Nielson Wind Turbines, CUP 02-11, - Submitted on March 29, 2011, this project consists of two 25' tall towers, one with three, five foot diameter wind turbines and one with two five foot diameter wind turbines. The applicant proposes to place the towers in the rear of the property, 40' from the rear property line and 68' from the eastern property line. The towers will be approximately 30' in overall height, less than the maximum permitted in this land use district but taller than the surrounding trees and homes. The project is located at 56742 Antelope Trail, east of Grand Avenue and identified as APN 595-102-03.

Senior Housing Project, CUP 03-11 and SP 01-11, - Submitted on April 18, 2011 this project consists of a 75 unit, three (3) story affordable senior (age-restricted) housing project. The project will consist of 74 units of 650 square foot, one (1) bedroom apartments and one (1) unit of 750 square foot two (2) bedroom, 4,199 square feet of common area, 3,924 of community and leasing area, 275 square feet of laundry area, 31,132 square feet of total interior common area, corridors, stairwells and balconies and approximately 4,446 square feet of carport. The total building square footage is

approximately 87,482 square feet. The site includes 26 covered parking stalls and 22 uncovered parking stalls. The project will include onsite retention, onsite sewage treatment, landscaping, parking, and may include amenities such as a clubhouse, pool/spa, gazebo, etc. The project is located at the northwest corner of 29 Palms Hwy and Dumosa Ave and is identified as APN 595-371-11 and the southern portion of 595-361-21.

Yucca Valley Animal Shelter, CUP 04-11 - Submitted on October 25, 2011 this project consists of a replacement animal shelter on approximately 2.16 acres of a five acre parcel located directly south of the existing Yucca Valley Animal Shelter. The replacement animal shelter will serve both the Town of Yucca Valley, as well as the unincorporated areas of the County of San Bernardino. The facility will include three, new single story buildings including an approximate 3,816 square foot administration building (4,419 sq. ft. Covered), approximate 2,071 enclosed square foot impound kennel (3,557 sq. ft covered), approximate 1,354 enclosed square foot adoptable kennel (2,097 sq. Ft. Covered). Total enclosed area is approximately 7,241 square feet. Parking areas will be constructed to accommodate vehicles for staff, public and shelter vehicles. The project will contain ancillary site improvements commonly associated with animal shelter operations as further described in this Staff Report and the environmental documents. The project is located at the south east corner of Malin Way and Paseo Los Ninos and is identified as APN 0597-021-08.

South Side Neighborhood/Community Park, CUP 06-11 - Submitted on October 25, 2011 this project consists of phase 1A of a multi-phase, multi-purpose neighborhood/community park. Phase 1A will consist of an approx. 1.5 acre dog park, 2 acres of playground, turf and hardscape, approx. 19,000 square feet of parking. Phase 1a will also include additive alternatives (optional items) for an approx. 180 square foot restroom building and an approx 1,400 square foot shade structure. Phase 1A is located on approx 5 acres.

Future phases, subject to additional review and approval may include the development of approx 10 acres of multi-use athletic fields, a frisbee golf course, a splash pad/ water play improvements, restroom and concession building, additional playground and picnic areas, informal open space, additional vehicle parking, an approximate 1 acre native plant garden, sand volleyball courts, walking and exercise trails, a minimum 2 acre undisturbed area, an approx 5,000 square foot maintenance building, and ancillary park improvements including field lighting, parking lot lighting, access and maintenance roads, hardscape and sidewalk improvements, picnic and shade shelters, barbecues, horseshoe and shuffleboard areas, jogging and exercise courses and related improvements. The entire neighborhood/community park is proposed to be constructed on an approx. 37.75 acre parcel. The project is located at the north west corner of Joshua Lane and Warren Vista Avenue and is identified as APN 0585-061-06.

Dollar General, SPR 01-11-Submitted on July 7, 2011 this project consists of a 12,480 square foot Dollar General retail building including 50 onsite parking spaces, landscaping and stormwater retention on 1.3 acres. The project is located at the northwest corner Of Twentynine Palms Highway and Hopi Trail, and is further identified as APN: 586-121-06.

Stevens Parcel Map, PM 19288 -Submitted on July 7, 2011 this project consists of subdividing a 30,056 square foot (.69 acre) parcel into three (3) 8,160 square foot (.19 acre) parcels with previously constructed single family homes in the residential single family, five (5) units per acre land use designation. The property is located on the west side of Plasse drive (7090, 7110, 7140 Plasse), south of cassia drive and identified as APNs 595-122-13, 34, and 38.

The Town received one application for a new commercial retail store, Dollar General, and a cell site. The Town also received applications for institutional projects such as a new park project, a senior housing project, and the Yucca Valley Animal Shelter. A Conditional Use Permit was also reviewed and approved for residential wind turbines. Policies at the state level – particularly those relating to sewage and package treatment plants have affected commercial developments. The Town, Hi Desert Water District and the California Regional Water Quality Control Board continue to work together on a solution. The Hi Desert Water District is moving forward with their plans for a wastewater collection and treatment system. The State has mandated that Phase One of the project be operational by 2016. In addition the requirement for package treatment systems has been eased and may facilitate some new commercial projects in the coming year.

There were no General Plan amendments requested or approved during 2011. The chart below lists the General Plan Amendments that have been requested since incorporation:

General Plan Amendments Since Incorporation				
DATE	CASE NO.	APPLICANT	PROJECT DESCRIPTION	STATUS
8/23/1993	GPA-01-93	KenLar Construction	Rezone from 4MRM to CO,	Approved
11/3/1993	GPA 02-93	Town of Yucca Valley	Rezone from RS18m to IN	withdrawn
11/3/1993	GPA 03-93		Rezone from RM4M to CO,	Approved
10/24/1996	GPA-01-96	Town of Yucca Valley	Section 11 Annexation	Approved
2/16/1999	GP-01-99	Banks Vaughn		Denied
2/15/2000	GPA 01-00	Town of Yucca Valley	Housing Element Update	Approved
05/30/2001	GPA 01-01	Leon Strand	Rezone R-HR to RL-5	Approved
06/14/2001	GPA 02-01	Barton Pedersen	Rezone R-HR to RL2.5	Approved
09/06/2001	GPA 03-01	Town of Yucca Valley	State Annual Report	Accept and file
03/07/2002	GPA 01-02	Tim Humphreville	RS -RM10 (RZ 01-02)	Denied
04/24/2002	GPA 02-02	Town of Yucca Valley	2001 Annual Report	Accept and file
02/28/2003	GPA 01-03	Bill Scholar	Rezone CG to RM	Approved
05/07/2003	GPA 02-03	Cole Stillwell	Rezone RL to CG	Approved
02/25/2004	GPA-01-04	Danmark Dev	Rezone RS-2 to RS-3.5	Approved
	GPA 02-04	Town of Yucca Valley	Rezone RL-1 to RS-3.5	Approved
12/08/2004	GPA-01-05	TYV	Land use designation changes	Approved
04/07/2005	GPA 02-05	Neighborhood Housing Group	Rezone RL-1 to RM-8	Approved
07/11/2005	GPA 03-05	Century Homes		withdrawn
08/10/2005	GPA-04-05	Randy Werner	Rezone R-HR to RL-5	Approved
03/10/2006	GPA-01-06	Bill Shack	Rezone RL-5 to RS-3.5	Approved
12/07/2006	GPA-02-06	Specialty Homes	Rezone	Approved
12/13/2006	GPA-03-06	Nickolas Ventures	Rezone to RM -10	withdrawn
	GPA 01-07	TYV	Old Town Specific Plan	Approved
12/18/2007	GPA 02-07	Chris Paolini	Rezone RL-1 to RS-2	Approved
03/20/2008	GPA 01-08	Curtis McGrew	Rezone R-HR to RL	Approved
01/19/2009	GPA 01-09	Town of Yucca Valley	Housing Element Update	Approved

Coinciding with the reduction in the residential housing market the Town has not approved or received any tentative tract map applications in 2011.

The following chart shows the tract maps that have been approved since incorporation:

SYNOPSIS OF TENTATIVE TRACT MAPS

APPLICATION DATE	CASE NO.	APPLICANT	LOCATION	TOTAL# OF LOTS	# OF VACANT LOTS
APPROVED PROJECTS					
02/28/2003	TM 16471	Bill Scholar	Desert Vista Village E. of Palm, S of Pine	106	83
09/05/2003	TM 16649	40 Villas LP	NE corner of Camino del Cielo and Martinez	34	34
02/25/2004	TM 16587	Danmark Development	S of Mountain View between Acoma and Church	57	48
04/01/2004	TM 16786	De Silva	Vera Lane west of Joshua Lane	4	4
04/16/2004	TM 16957	Bob Stadum	E side of Acoma 1 parcel N of Joshua Drive	34	34
09/13/2004	TM 16787	Rondel Ent.	W of SR247 S of Castro	54	54
09/13/2004	TM 16733	Arthur Schultz	S of Santa Barbara E & W of Indio	17	17
10/29/2004	TM 17240	Leon Strand	Santa Barbara between Balsa and Emerson	4	3
12/13/2004	TM 17328	Yucca Estates	SW corner of Yucca Tr. And Emerson	17	17
06/14/2005	TM 17633	Burnt Mtn Haciendas	SW corner of Palomar and Onaga	61	61
01/27/2006	TM 17476	SILVATEX,INC	N of Paxton 1 parcel E of Imperial	43	43
08/22/2006	TM 18011	Specialty Homes	SE Corner of Cholla Ave. and Joshua Dr.	8 1 remain	8
03/10/2006	TM 17862	Copper Hills Homes	NE corner of Sage Ave and San Andreas	107	107
06/15/2007	TM 17985	Fred Golestani	NE corner of Palomar Ave and Juarez Dr	20	20
12/18/07	TM 18418	Pueblo Mesa	NE corner of Sage Ave and Golden Bee Drive	142	142
12/23/2009	TM18773	Beverly Lucas	SW corner of Cholla Ave and Carlyle Dr.	60	60
		TOTAL # OF APPROVED LOTS		768	
		TOTAL # OF VACANT LOTS			735

Since incorporation there have been six tract maps that have recorded. They are:

1. Tract Map 16471 Desert Vista Village
2. Tract Map 16587 Mesquite 55
3. Tract Map 16786 Da Silva
4. Tract Map 16957 Living Space
5. Tract Map 17240 Strand
6. Tract Map 17328 Yucca Valley Estates

Coinciding with the reduction in the residential housing market the Town has received only one new application for a parcel map in the last review period, PM 19288 Stevens.

The following chart shows all of the Tentative Parcel Maps that have been approved since incorporation:

SYNOPSIS OF TENTATIVE PARCEL MAPS

APPLICATION DATE	CASE NO.	APPLICANT	LOCATION	TOTAL # OF LOTS	# OF VACANT LOTS
APPROVED PROJECTS					
08/24/1992	PM 14325	Leonard Malin	SW corner Sunnyslope Dr and Warren Vista Ave	2	1
10/26/1993	PM 14602	Robert Smith	SE corner of Yucca Tr and Valley Vista Ave	3	2
08/24/1994	PM 14722	Alan Petty	SW corner Dulce Ave and Santa Barbara Dr	4	4
10/27/1998	PM 15202	Tom Humphreville	NW corner Country Club Rd and Quemada Tr	2	0
05/30/2001	PM 15708	Leon Strand	SE corner Balsa Ave & Terbush	4	
04/05/2004	PM 16561	Copper Hill Homes	W side of Selecta Ave N of Juarez Dr	2	0
12/10/2004	PM 17012	Andora Sprecher	SW corner Jemez Tr and Mountain View Tr	4	4
03/24/2005	PM 17093	Paul Cook/Jean Smith	SW corn Cortez and Dulce	4	4
06/28/2005	PM 17221	Ted Philips/Janet Grace	NE corner Warren Vista and Santa Barbara	4	4
06/20/2006	PM 18056	Mark Melby	NE corner of Cholla Ave and Buena Vista Dr	4	4
08/15/2006	PM 18321	Marcos Ocequeda	Borrego Tr and Papago Tr	2	2
09/25/2006	PM 18009	Robert & Amelia Smith	SW corner Yucca Tr and Valley Vista	2	2
10/06/2006	PM 17784	Phyllis Haley	corner of Balsa Ave and Vaduz Ave	2	2

03/06/2007	PM 18349	Dawn Rowe	NE corner Emerson Ave and Vera Lane	2	2
04/20/2007	PM 18472	Steve Inverno	NW corner Camino Del Cielo and Onaga Tr	2	2
06/01/2007	PM 18759	Helen Holloway	S of Griffis Rd, east and west of SR 247	2	2
09/27/2007	PM 18818	Curtis McGrew	7953 Valley Vista	2	1
03/20/2008	PM 18967	Curtis McGrew	south end of Valley Vista, east side of street	4	3
07/07/11	PM19288	Mark Stevens	7090, 7110, 7140 Plasse	3	0
			TOTAL # OF APPROVED LOTS	54	
			TOTAL # OF VACANT LOTS		39

**COMPREHENSIVE GENERAL PLAN
LAND USE ELEMENT**

The Land Use Element has an essential relationship with all other elements of the General Plan, affecting the need for resources, infrastructure, jobs, housing, public services and facilities. The purpose of the Land Use Element is to provide a comprehensive depiction of land use allocation and distribution throughout Town. The Land Use Element is commonly emphasized, due to its ties with all other Elements of the General Plan.

An on-going program of the Land Use Element is maintaining the zoning map consistent with the General Plan Map land use map and updating simultaneously with each General Plan land use Amendment. During the last reporting period, there were no General Plan Amendments. As indicated under the General Land Use Activity section, there have been only seventeen General Plan Amendments since incorporation; two of these were approved prior to the adoption of the current General Plan. The requests were received in 1993, 1996, 2001, 2003, 2004, and 2005, 2006, 2007, 2008 and 2009.

It has been recognized by the Town and mentioned in previous updates that there are areas within the Town currently zoned R-L-1 and R-L-2.5 that are problematic for infill development or additions to existing structures. Within these specific areas, it is very difficult to meet setback requirements for a home sized typical to the area. As the Town moves forward with a General Plan/Development Code Update it is expected that these areas will be evaluated and appropriate changes will be made.

Yucca Valley does not typically experience a high level of development from large-scale projects and continues to have a slower growth rate in comparison to other southern California communities. This is highlighted by the fact that approximately 1,757 single-family residential dwellings have been permitted in the Town over a 20 year period (June 1992 to January 31, 2012). In addition the California Department of Finance estimates the population change between January 1 2010 and January 1, 2011 at 0.7%. This slow growth rate is due to the economy, and the fact that Yucca Valley is a bedroom community

to the Coachella Valley as well as a retirement community. Only during 2002-2006 was there a substantial increase in single family residential construction. For Calendar year 2011 a total of 12 new single family homes were permitted.

**COMPREHENSIVE GENERAL PLAN
HOUSING ELEMENT**

HISTORICAL HOUSING UNITS:

The purpose of the Housing Element is to provide a comprehensive understanding of the housing needs and to set policies and programs that will enable the Town to reach its defined housing goals. Housing goals are based on a Regional Housing Needs Assessment (RHNA), developed by the Southern California Council of Governments (SCAG) and the San Bernardino Association of Governments (SANBAG).

The following chart lists the numbers of single and multi-family building permits issued during the fiscal years listed. However, please note the total for 11-12 is for the calendar year 2011:

	SFR	MFR
91-92	16	
92-93	31	
93-94	13	
94-95	24	
95-96	11	
96-97	6	
97-98	21	
98-99	44	
99-00	54	
00-01	82	
01-02	118	
02-03	188	
03-04	353	4
04-05	384	4
05-06	244	13
06-07	99	2
07-08	36	2
08-09	7	0
09-10	11	0
10-11	2	0
11-12**	12	0

**Calendar Year, Jan 1, 2011-Dec 31, 2011, all others fiscal years

As the above chart shows, the number of new single and multi-family building permits peaked in the 2004- 2005 fiscal year and has been in decrease each year since.

Specific actions and expenditures during this reporting period include the following.

LEASE OF AGENCY DUPLEXES:

The Yucca Valley Redevelopment Agency (RDA) continued to lease the five existing duplex structures to Unity Homes. The duplexes provide housing to ten very low and low to moderate income families. Presently, only six units are occupied.

SENIOR HOUSING PROJECT:

The Town retained a development entity to design, entitle, and construct a 75 unit, senior affordable housing project. The development entity has secured several financing commitments for the construction of the project and is currently competing for tax credit financing through Tax Credit Allocation Committee submittals. Results to that request are expected by summer of this year.

REVIEW OF GOVERNMENTAL CONSTRAINTS ON HOUSING:

The Town of Yucca Valley has relatively low constraints on housing. This fact is exemplified by the following.

1. Single family residential development requires no architectural review, or any other governmental process, other than the standard Building & Safety Plan Check and field inspection process;
2. The building permit and plan check fees were increased in March 2005 which had not been amended since incorporation of the Town of Yucca Valley in 1991. Per square foot residential valuation remains \$55.18 per square foot for living area.
3. There are no constraints that hinder the development and construction of affordable housing within the Town of Yucca Valley.
4. Repair and rehabilitation of housing units within the Town is not regulated, except through the Uniform Building Codes. There is no requirement for architectural review, design review, or any other entitlement process for the repair and/or rehabilitation of housing units within the Town.
5. Architectural/Site Review processes are included within the entitlement process for new multi-family development projects, and no additional time frames or costs are associated with review of these projects
6. Standard building plans are reviewed within ten business days. Engineered plans may take up to 15 business days to review.
7. The Town Council has reduced the impact fee for all new Infill Single Family Residences to \$2,568.

During the reporting period, issues remained regarding the continued use of septic systems and their impact on water quality. Discussions have continued to take place between the Hi-Desert Water District, Regional Water Quality Control Board, and the Town. The Regional Water Quality Control Board has required that Phase One be operational by 2016. The Hi Desert Water District is working to meet this goal. In the interim the Regional Board has relaxed some requirements for package treatment plants, which may make it more appealing for new development to come to Yucca Valley.

REGIONAL HOUSING NEEDS BY INCOME:

The Town of Yucca Valley uses Department of Housing and Urban Development income criteria for San Bernardino County area in determining eligibility for affordable housing programs.

San Bernardino County Income Limits										
FY 2012 Income Limit Area	Median Income	FY 2012 Income Limit Category	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
San Bernardino County	\$63,300	Very Low (50%) Income limit	\$23,450	\$26,800	\$30,150	\$33,500	\$36,200	\$38,900	\$41,550	\$44,250
		Extremely Low (30%) Income limit	\$14,100	\$16,100	\$18,100	\$20,100	\$21,750	\$23,350	\$24,950	\$26,550
		Low (80%) Income Limit	\$37,550	\$42,900	\$48,250	\$53,600	\$57,900	\$62,200	\$66,500	\$70,800

The Town of Yucca Valley's adopted and State approved Housing Element indicates the Town's share of regional housing needs is outlined as follows. The Town has updated its Housing Element, which was approved by the Town Council on September 15, 2009. As part of the updated Housing Element the RHNA numbers are listed below. The housing needs figures below reflect the figures for the current SCAG/SANBAG planning period, which expires 2014. The numbers for the next planning period are in process and should be incorporated into the Town's General Plan Update.

<u>Income Category</u>	<u>Number of Units</u>
Extremely Low	280
Very low Income:	280
Low Income:	399
Moderate Income:	474
Above Moderate Income:	1,076
Total	2,509

For the 2011 (calendar year) review period, building permits for 12 single family units and no multifamily units were permitted. This is a slight increase from the previous fiscal year, during which 2 single-family units and no multifamily units were permitted.

The Town has been working with Southern California Associate of Governments (SCAG) for the last two years on the Regional Transportation Plan and Sustainable Cities Strategies. The work has resulted in draft RHNA for 2014 to 2021 planning period. The draft numbers have reduced the total number of units required to 930 as compared to 2,509. These numbers are still draft and may be adjusted as the process continues forward. Additionally, the Town has been awarded a COMPASS Blueprint grant to support Sustainable Communities Strategy development for the mid-Town area.

ACTIONS TO IMPLEMENT THE GENERAL PLAN ELEMENTS:

During the reporting period, development proposals of all types have been reviewed and conditioned so they conform to applicable policies of the Comprehensive General Plan.

UPDATES TO GENERAL PLAN ELEMENTS:

General Plans are dynamic documents, and need to be evaluated in terms of changing views, desires, strategies, and overall effectiveness on a regular basis. It has been noted by the State office of Planning and Research that the Town of Yucca Valley has not completely revised the General Plan, in its entirety, in more than 10 years. This information is provided to the Attorney General of the State of California; but it does not mean that the Plan is out of date or ineffective.

The Town Council authorized a comprehensive General Plan update in February of 2011. The Town and the selected consultant, The Planning Center, have been working over the last year on this important update. Several public outreach meetings have been held to start soliciting input from the citizens. "Open Town Hall" has been launched to help engage citizens that may not be able to attend public meetings. A community profile has been created and is available for viewing and purchase on our website. You may visit our website for the latest information at: <http://www.yucca-valley.org/departments/gpu.html> The Development Code and other regulations play a critical role in implementing the goals, policies, and programs of the General Plan; Specific Plans provide more detailed goals, policies and programs for a more limited, specifically-defined area within the Town's corporate limits.

CONCLUSION:

The Development Code is the primary tool for implementing the General Plan. At the May 26, 2009 Town Council meeting authorization was given to begin the process of a Development Code Update. A consultant has been selected and a community survey conducted. A draft staff review code should be completed shortly and presented to Staff. It is anticipated that in the next 8 months the Development Code Update will be completed.

It is a goal of the Town to establish a safe, attractive community with appropriate infrastructure for area residents, business owners, and visitors. With proper tools, this goal is attainable.

END OF ANNUAL REPORT

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction: Town of Yucca Valley
 Reporting Period: 1/1/2011 - 12/31/2011

Table A

Annual Building Activity Report Summary - New Construction Very Low-, Low-, and Mixed-Income Multifamily Projects

1		4				5	5a	6		7	8
		Affordability by Household Incomes						Assistance Programs for Each Development	Deed Restricted Units		
Project Identifier (may be APN No., project name or address)	2	3			Total Units per Project	Est. # Infill Units*	See Instructions	See Instructions	See Instructions	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.	
N/A	Unit Category	Tenure R=Renter O=Owner	Very Low-Income	Low-Income							Moderate-Income
(9) Total of Moderate and Above Moderate			▲	▲	0	12					
(10) Total by income Table A/A3			▲	▲		12					

* Note: These fields are voluntary

(11) Total Extremely Low-Income Units*

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction: Town of Yucca Valley
Reporting Period: 1/1/2011 - 12/31/2011

**Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)**

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				TOTAL UNITS	(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income			
(1) Rehabilitation Activity					0	
(2) Preservation of Units At-Risk					0	
(3) Acquisition of Units					0	
(5) Total Units by Income	0	0	0	0	0	

* Note: This field is voluntary

**Table A3
Annual building Activity Report Summary for Above Moderate-Income Units
(not including those units reported on Table A)**

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley						
Reporting Period	1/1/2011 -	12/31/2011					
	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate						0	
No. of Units Permitted for Above Moderate	12					12	4

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation (CCR Title 25 §6202)

Jurisdiction Town of Yucca Valley
Reporting Period 1/1/2011 - 12/31/2011

Table B

Regional Housing Needs Allocation Progress

Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.	RHNA Allocation by Income Level										Total Units to Date (all years)	Total Remaining RHNA by Income Level	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 9			
Very Low													560
Low													399
Moderate													474
Above Moderate	147	73	24	4	8	12					268	808	
Total RHNA by COG. Enter allocation number:	147	73	24	4	8	12					268	2,241	
Total Units	▲	▲	▲	▲	▲	▲							
Remaining Need for RHNA Period	▲	▲	▲	▲	▲	▲							

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction Town of Yucca Valley
Reporting Period 1/1/2011 - 12/31/2011

**Table C
Program Implementation Status**

Program Description (By Housing Element Program Names)	Objective	Timeframe in H.E.	Status of Program Implementation
P.71 Program 1.A	Maintain the Home Improvement Program for low/very low income households to encourage rehab of 120 existing housing units.	Ongoing	Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element. With the elimination of the RDA by the State this program will need to be evaluated as part of the General Plan Update process.
Program 1.B	All applicable codes enforced to keep existing units in good repair	Immediate, ongoing	This is monitored through Code Enforcement and determination is made on a case by case basis.
Program 1.C	Continue to ID neighborhoods with substandard infrastructure and quantify for improvements	Ongoing	The Town has continued to maintain a 5 year Capital Improvements program which identifies allocation of financial resources to infrastructure improvements Town wide.
Program 2.A	Maintain and update inventory of all land suitable for residential development	Annually	The Town continues to maintain the Zoning and General Plan Maps. Further a table is maintained which has an inventory of all General Plan Amendments and tabulates the acreage changes. Table III-14 in the GP Housing Element lists the vacant high density land inventory within the Town Boundaries.

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley	Reporting Period	1/1/2011 - 12/31/2011
Program 2.B	Maintain land use zoning designations in General Plan and zoning maps that allow different housing types consistent with low density rural character of the Town	Ongoing	The Town continues to maintain the Zoning and General Plan Maps. The Towns Development Code and General Plan provide for a wide variety of housing types. These include 1 dwelling unit per 20 acres (Rural Hillside Reserve) up to 40 units per acre in the Old Town OTSP (OTMU). These designations allow for higher densities in appropriate areas along the highway and more rural type development as you move away from the Highway.
Program 2.C	RDA to establish lot consolidation for the OTSP area	2010-2011, annually thereafter	With the elimination of the RDA by the State this program will need to be evaluated as part of the General Plan Update process.
Program 2.D	Monitor capacity of all Specific Plan lands in Inventory (table III-14) to assure sufficient capacity of the Town's lower income need remains	Annually	There has been no development within the OTSP boundaries resulting in the elimination or reduction of affordable housing.
Program 2.E	Incentives development in the OTSP	Ongoing	With the elimination of the RDA by the State this program will need to be evaluated as part of the General Plan Update process.
Program 3.A	Town's Density Bonus Ordinance shall be updated and maintained current with State Requirements	2008-2009, Ongoing	The Town is currently updating the Development Code. A Draft Staff Review version should be provided shortly. The Development Code is expected to be completed in the next approximately 8 months. The density bonus ordinance will be updated with the development code while the policies will be updated with the General Plan. These will be included as part of these updates.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley	Reporting Period	1/1/2011 - 12/31/2011
Program 3.B		Ongoing	<p>In the absence of the RDA, the Town is continuing to coordinate closely with the SBCHA for current HOME funds that are available for construction of new affordable units. The RDA had entered into an exclusive negotiating agreement(ENA) with a private developer for the construction of up to 75 affordable units, and the developer will be applying for San Bernardino County HOME funds for the project. The Town will continue to work to provide affordable units to the community.</p>
P.7 Program 3.C		Ongoing	<p>There have been no requests received for assistance with housing for handicapped residents.</p>
Program 3.D		Ongoing	<p>Any complaints the Town receives are forwarded to the County for their consideration. Town Code enforcement also addresses service requests regarding the condition of housing units and take appropriate action to ensure the upgrade of substandard units.</p>
Program 3.E		Ongoing	<p>There have been no applications received for the development of a County affordable housing project received by the Town.</p>
Program 3.F		2008-2009	<p>The Town is currently updating the Development Code. This will be included in the Update.</p>

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley	Reporting Period	1/1/2011 - 12/31/2011
Program 3.G		2008-2009	In the absence of the RDA, the Town is continuing to coordinate closely with the SBCHA for current HOME funds that are available for construction of new affordable units. The RDA had entered into an exclusive negotiating agreement(ENA) with a private developer for the construction of up to 75 affordable units, and the developer will be applying for San Bernardino County HOME funds for the project. The Town will continue to work to provide affordable units to the community.
P.74		2008-2009	The Town is currently updating the Development Code. This will be included in the Update.
Program 3.I		2010-2011	The Town is currently updating the Development Code. This will be included in the Update.
Program 4.A		Annually	The Towns finance division allocates all LMI set aside funds to an account that it restricted to expenses for the preservation or construction of affordable housing units.

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley	Reporting Period	1/1/2011 - 12/31/2011
Program 4.B	The RDA will develop program(s) for the development of new residential units for very low households and assign set-aside funds for these units.	2009-2010	In the absence of the RDA, the Town is continuing to coordinate closely with the SBCHA for current HOME funds that are available for construction of new affordable units. The RDA had entered into an exclusive negotiating agreement(ENA) with a private developer for the construction of up to 75 affordable units, and the developer will be applying for San Bernardino County HOME funds for the project. The Town will continue to work to provide affordable units to the community.
P.75 Program 4.C	Assist developers in preparation of applications for State and Federal housing grants and loans(HOME/LMI Tax credit) as available.	Ongoing	No requests were received this year. However last year the Town assisted Highland Property Development LLC, in preparation of their applications for the California Tax Credit Allocation Committee. The project consisted of 83 affordable units. The Town is coordinating closely with the SBCHA for current HOME funds that are available for construction of new affordable units. The RDA had entered into an exclusive negotiating agreement(ENA) with a private developer for the construction of up to 75 affordable units, and the developer will be applying for San Bernardino County HOME funds for the project.
Program 4.D	Continue to distribute County materials for developers and low income households which contain information on assistance in the development and rehabilitation of low income housing.	Continuous	The Town provides a wide variety of handouts to assist both the citizens and development community. The Town issues requests for Proposals for an affordable housing project. This resulted in an ENA to develop a Town owned piece of property.
Program 4.E	Should the Town be notified of intent to sell any at risk/affordable housing developments all possible funding sources including CDBG/RDA set asides should be considered for purchase.	Continuous	The Town has and will continue monitor if any such properties are proposed to be sold.

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley
Reporting Period	1/1/2011 - 12/31/2011
Program 5.A	<p>Conversion of existing mobile home parks to permanent housing will continue to be regulated by ordinance to ensure appropriate relocation plan for park residents is developed and implemented.</p> <p>Ongoing</p> <p>No mobile home park conversions have been proposed.</p>
Program 6.A P.76	<p>Ensure that new development and rehabilitation efforts maximize energy efficiency through architectural and landscape design and the use or renewable resources and conservation.</p> <p>Ongoing</p> <p>New construction is required to comply with the standards set forth in the California Building Codes.</p>
Program 6.B	<p>Encourage the use of LEED design principles in multifamily projects.</p> <p>Ongoing</p> <p>No multi-family projects have been formally submitted in this review period.</p>
Program 7.A	<p>Maintain a Planned Development Ordinance (PRD) permit ordinance which allows flexibility in development standards.</p> <p>Continuous</p> <p>The Planned Development Ordinance provides for flexibility in design and helps to assist in the affordability of the units. No Planned Developments were approved this calendar year.</p>
Program 8.A	<p>Specific Plans shall incorporate a variety of housing types and shall include senior and affordable housing within the project.</p> <p>Ongoing, as Specific Plans are submitted</p> <p>The Town approved a Specific Plan for the Senior Affordable Housing project. This proposal was to allow for the construction of 75 age and income restricted units.</p>
Program 8.B	<p>Encourage infill and expansion of existing wherever possible to lower info structure costs.</p> <p>Continuous</p> <p>The Town has and will continue to encourage the development of infill projects. The majority of new single family residential units are in fact infill lots. Only 43 out of 1,700+ new single family residential permits issued since incorporation in 1991 were for lots in newly record tracts.</p>

ANNUAL ELEMENT PROGRESS REPORT Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction	Town of Yucca Valley	Reporting Period	1/1/2011 - 12/31/2011
Program 8.C		Ensure that infill development occurs in areas with adequate infrastructure to support neighborhood build-out.	Continuous
Program 8.D		Promote development of mixed use projects in the OTSP area . The Town shall post Table III-14 on the Towns website as part of a page dedicated to development in the OTSP.	2008-2009, ongoing
Program 9.A		Encourage multi-family rental and owner-occupied projects which construct 3 and 4 bedroom units as a substantial portion of the overall development. Larger units shall be encouraged through Town funding or bond financing.	Continuous
Program 9.B.		Amend the Development Code to allow second units on single family residential lots consistent with state law.	2008-2009
Program 10.A		Maintain the Home Rehabilitation Program to enable 10 senior residents to maintain and rehabilitate their homes. Flyers advertising the program shall be posted at various locations.	Ongoing
Program 10.B		Provide assistance to developers of affordable senior housing through Housing set-aside funds.	Ongoing

The Town has and will continue to encourage the development of infill projects, in areas where infrastructure can support. The majority of new single family residential units are in fact infill lots. Only 43 out of 1,700+ new single family residential permits issued since incorporation in 1991 were for lots in newly record tracts.

The Town has the entire OTSP posted in its website at: http://www.yucca-valley.org/departments/otyv_sp.html

No multifamily units were constructed during this review period. The Town will continue to encourage this as projects are submitted.

The Town is currently updating the Development Code. This will be included in the Update, if required.

The Town provides a wide variety of handouts to assist the citizens of the community.

The Town entered into an ENA with a developer for the construction of 75 affordable senior housing units. Entitlement documents are currently in discussion.

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation*

(CCR Title 25 §6202)

Jurisdiction Town of Yucca Valley
Reporting Period 1/1/2011 - 12/31/2011

Program 11.A	Require Specific Plan projects to develop design guidelines which provide for buffers between land uses, mall scale architecture and appropriate architecture.	Continuous	No Specific Plans were submitted or approved during this review period.
Program 11.B	Residential projects shall be required to provide bicycle and pedestrian facilities, including trails, sidewalks, benches and open space.	Continuous	The Town has an approved Trails Masterplan Map. During this review period one residential project was adjacent to a proposed bike lane. The project was conditioned to provide for this lane when construction moves forward. Additionally this project will provide sidewalks, various walking trails, open space and other amenities. An addition project was adjacent to a future horse trail and was required to provide the appropriate dedications. This Development also included large undisturbed portions and sidewalks in the more dense(1/2 acre lot) portion of the development.
Program 12.A	Require developers of affordable senior housing projects to confer with the public transit agency regarding the provision of service to the project.	Continuous	All development projects are sent to the Morongo Basin Transit Agency for review and comment. If the Agency has any conditions those are included with the Conditions of approval for the project.
Program 12.B	Ensure affordable and senior housing projects are located in areas with adequate public improvements including streets and sidewalks.	Continuous	No affordable or senior housing projects were formally submitted or approved during this review. However, as previously mentioned the Town entered into an ENA a developer for a senior housing project in an appropriate location. The location is in close proximity to the Senior Center, Museum facility, restaurants and shopping facilities.

Statistical Summary of General Plan Land Uses

Changes since December 14, 1995
IN ACRES

Category	December 14, 1995		December 31, 2010		Strand GPA 01-01	Pedersen GPA 02-01	Scholar GPA 01-03	Silwell GPA 02-03	Danmark GPA 01-04	Copper Hills GPA 02-04	TVU GPA 01-05	Neighborhood Housing Gp GPA 02-05	Werner & Ames GPA 04-05	Copper Hills GPA	Homes GPA 02-06	Pueblo Mesa GPA 02-07	McGrew GPA 01-08	
	Acres	% of Total	Acres	% of Total														
0-1 du/20 acres	4,177	16.76%	4,108	16.45%	-25	-7.7												
0-1 du/5 acres	4,512	18.51%	4,573	18.35%	25													
0-1 du/10 acres	139	0.56%	139	0.56%														
0-1 du/2.5 acres	5,049	20.28%	5,074	20.36%		7.7												
0-1 du/acre	2,290	9.19%	2,129	8.54%														
0-2 du/acre	3,991	15.98%	4,092	16.42%														
0-3 du/acre	17	0.07%	151	0.61%														
0-4 du/acre	25	0.10%	25	0.10%														
0-5 du/acre	1,254	5.03%	1,252	5.02%														
0-4 du/acre	12	0.05%	12	0.05%														
0-8 du/acre	30	0.12%	35	0.14%														
0-10 du/acre	328	1.32%	337	1.35%														
0-12 du/acre	9	0.04%	9	0.04%														
0-14 du/acre	97	0.39%	97	0.39%														
Sub Total	22,020	88.38%	22,012	88.42%														
Vanes	281	1.13%	281	1.13%														
N/A	63	0.25%	63	0.25%														
N/A	102	0.41%	103	0.41%														
N/A	503	2.02%	492	1.97%														
N/A	20	0.08%	20	0.08%														
N/A	49	0.20%	49	0.20%														
N/A	121	0.49%	121	0.49%														
N/A	860	3.45%	860	3.45%														
N/A	365	1.55%	363	1.56%														
N/A	512	2.05%	503	2.02%														
Sub Total	2,896	11.62%	2,884	11.58%														
TOTAL	24,916	100.00%	24,916	100.00%														
Action 11 (not included in the above)																		
HR-20 1 du/40 acres = 499 acres																		
-2.5 1 du/2.5 acres = 141 acres																		
TOTAL Net Gain - Number of SFR Parcels = 640																		
TOTAL Net Gain - Number of SFR Parcels = 25,556																		
Changes to Hillside H-R-20 (in acres) = 68 B																		
(# of parcels) = 4																		
Changes to Hillside H-R-20 (in acres) = 24 B																		
(# of parcels) = 7																		
AD TOWN SPECIFIC PLAN: Did not create any new parcels - Reduced Commercial Industrial space by 478,435 square feet - Increased multi-family residential units by 1,088																		

**TOWN OF YUCCA VALLEY
PLANNING COMMISSION MEETING MINUTES
FEBRUARY 28, 2012**

Vice Chair Alberg called the regular meeting of the Yucca Valley Planning Commission to order at 6:00 p.m.

Commissioners Present: Bridenstine, Drozd, Hildebrand (Arrived at 6:02 p.m.), and Vice Chair Alberg. Chair Humphreville was excused.

Pledge of Allegiance was led by Vice Chair Alberg

APPROVAL OF AGENDA

Commissioner Bridenstine moved to approve the agenda. Commissioner Drozd seconded. Motion carried 3-0-2 on a voice vote with Commissioner Hildebrand and Chair Humphreville absent.

PUBLIC COMMENTS

None

DISCUSSION ITEM

1. GENERAL PLAN ANNUAL REVIEW FOR CALENDAR YEAR 2011

The annual report for calendar year 2011 on the status of the General Plan and progress on its implementation pursuant to Government Code Section 65400.

Associate Planner Kirschmann gave the staff report contained in the printed agenda noting that state law mandates that all cities and counties submit an annual report on the status of the General Plan and progress on its implementation. It is anticipated that the General Plan update will be completed by end of calendar year 2013.

Commissioner Bridenstine moved to receive and file the General Plan Annual Report for the Calendar Year 2011 and forward that recommendation to the Town Council. Commissioner Drozd seconded. Motion carried 4-0-1 on a voice vote with Chair Humphreville absent.

CONSENT AGENDA

2. MINUTES

A request that the Planning Commission approve as submitted the minutes of the Special meeting held on January 24, 2012

Commissioner Drozd moved to approve the minutes as presented. Commissioner Bridenstine seconded. Motion carried 45-0-1 on a voice vote with Chair Humphreville absent.

STAFF REPORTS AND COMMENTS

FUTURE AGENDA ITEMS:

Deputy Town Manager Stueckle advised that at the next Town Council Meeting staff will be asking to set a joint meeting between the Council and Planning Commission to provide direction on the sign ordinance to the staff and consultants working on the Development Code update.

COMMISSIONER REPORTS AND REQUESTS

None

ANNOUNCEMENTS

The next regular meeting of the Yucca Valley Planning Commission is Tuesday, March 13, 2012 at 6:00 p.m. in the Yucca Valley Community Center.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:08 p.m.

Respectfully submitted,

Jamie Anderson, MMC
Town Clerk

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager
Date: March 15, 2012
For Council Meeting: March 20, 2012

Subject: General Plan Vision 2035

Prior Council Review: The Town Council discussed General Plan Vision 2035 alternatives at its strategic planning workshop of January 27, 2012.

Recommendation: That the Town Council approves Alternative 1 Vision 2035 for the General Plan Update project as follows.

While maintaining our small town atmosphere, the Town of Yucca Valley is a unique, desirable place to live, the economic hub of the Morongo Basin, and a sought after place to visit.

As a destination, visitors are drawn to our desert environment, arts and culture, recreation, history, night skies, active open space, and shopping and hospitality opportunities.

Our range of community services and facilities, efficient infrastructure, safe and established neighborhoods, unique character, and diversity define our community and quality of life.

Our commitment to balanced growth, environmental stewardship, fiscal sustainability, active citizen participation, and property rights are the cornerstones of our community.

Executive Summary: On Friday, January 27th, the Town Council hosted a Strategic Planning workshop to set goals for the community for the upcoming year. As part of that workshop, the Town Council discussed and made revisions to the vision statement that will be used to provide direction for the General Plan Update.

The Community Values and Draft Vision 2035 were developed using the community input received over the past several months via workshops hosted by the Town and a statistically valid 25 minute telephone survey conducted with 305 Town residents at the end of December.

Reviewed By:


Town Manager

Town Attorney


Mgmt Services

SRS

Dept Head

____ Department Report
 Consent

____ Ordinance Action
 Minute Action

____ Resolution Action
____ Receive and File

____ Public Hearing
____ Study Session

The Town Council agreed to the list of values and obtained general agreement on the draft Vision 2035 statement, with the exception of the third paragraph.

Order of Procedure:

- Request Staff Report
- Request Public Comment
- Council Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote, Consent Agenda)

Discussion: As discussed at the Strategic Planning Workshop in February of this year, a vision statement is a formal expression of what a community wants to become. A vision statement is also used to establish future priorities. A vision statement should also touch on several important elements in every community including social, physical, economic, environmental and governmental.

The General Plan Update Vision Statement will be used as foundation by staff and the General Plan Team for developing goals, policies and actions in the General Plan document.

The two alternatives considered by the Town Council and placed on the Open Town Hall forum are as follows.

While maintaining our small town atmosphere, the Town of Yucca Valley is a unique, desirable place to live, the economic hub of the Morongo Basin, and a sought after place to visit.

As a destination, visitors are drawn to our desert environment, arts and culture, recreation, history, night skies, active open space, and shopping and hospitality opportunities.

Alt 1: Our range of community services and facilities; efficient infrastructure; safe and established neighborhoods; unique character; and diversity define our community and quality of life.

Alt 2: Our community services, facilities, and infrastructure are efficient and meet our community's needs. Our safe and established neighborhoods; unique character; and diversity define our community and quality of life.

Our commitment to balanced growth, environmental stewardship, fiscal sustainability, active citizen participation, and property rights are the cornerstones of our community.

First Topic Results: Eight people participated in the first topic "Which Alternative of the General Plan Vision 2035 statement do you prefer?" Alternative 1 was favored (6-2) among all participants. It was also favored (4-1) among the five participants from inside Yucca Valley.

Community Values: Based upon the community participation, outreach programs, and the statistically valid survey, the Town Council concurred with the following community values to be addressed within the General Plan Vision 2035.

- Small town atmosphere
- Safe and established neighborhoods
- Diverse range of community services
- Strong economy
- Arts and culture
- Balanced growth
- Fiscal sustainability
- Efficient infrastructure
- Desert environment and natural resources
- Community pride and participation

112 Attendees: Open Town Hall launched in February, and we're off to a great start - 112 people around Yucca Valley visited the forum during February to find out about the vision statement for the General Plan Vision 2035.

40 Subscribers: Forty people subscribed to receive updates in February - and now they're in the loop to receive the latest information as the General Plan Vision 2035 unfolds.

Alternatives: The Town Council may elect to adopt the Vision Statement as deemed appropriate.

Fiscal impact: NA

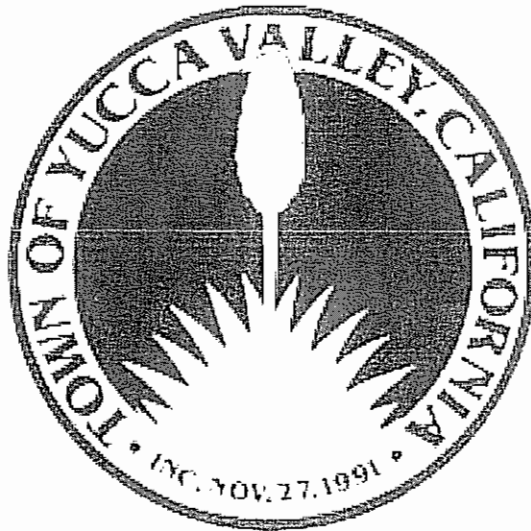
Attachments: Open Town Hall Participation Results
Strategic Planning Workshop Vision Statement Power Point

Vision Statement

Which alternative of the General Plan Vision 2035 statement do you prefer?

Public comments as of March 15, 2012, 6:42 AM

All Participants around Yucca Valley



As with any public comment process, participation in Open Town Hall is voluntary. The statements in this record are not necessarily representative of the whole population, nor do they reflect the opinions of any government agency or elected officials.

Vision Statement

Which alternative of the General Plan Vision 2035 statement do you prefer?

Introduction

We're crafting our vision statement. We're down to two alternatives, and need your input to decide which one is better.

Which alternative do you like? (They are the same, except for the third paragraph.)

While maintaining our small town atmosphere, the Town of Yucca Valley is a unique, desirable place to live, the economic hub of the Morongo Basin, and a sought after place to visit.

As a destination, visitors are drawn to our desert environment, arts and culture, recreation, history, night skies, active open space, and shopping and hospitality opportunities.

Alt 1: Our range of community services and facilities; efficient infrastructure; safe and established neighborhoods; unique character; and diversity define our community and quality of life.

Alt 2: Our community services, facilities, and infrastructure are efficient and meet our community's needs. Our safe and established neighborhoods; unique character; and diversity define our community and quality of life.

Our commitment to balanced growth, environmental stewardship, fiscal sustainability, active citizen participation, and property rights are the cornerstones of our community.

Vision Statement

Which alternative of the General Plan Vision 2035 statement do you prefer?

As of March 15, 2012, 6:42 AM, this forum had:

Attendees:	131
Participants around Yucca Valley:	8
Minutes of Public Comment:	24

Vision Statement

Which alternative of the General Plan Vision 2035 statement do you prefer?

All Participants around Yucca Valley who selected 'Alternative 1'

David Williams inside Yucca Valley

February 23, 2012, 10:42 AM

I like alt 1

Both statements to me seem vague and too short to really commit too. But I support #1. Preservation of the natural high desert environment which includes respect and preservation of native plants should be a priority. This natural beauty is why most of us came here and why visitors come here. Development for the sole sake of revenue will destroy this natural beauty. Property owners have rights but large scale developers should be in a different category. The well planned development of the old town area should be a priority as well.

Also, any sort of maintenance on the local infrastructure including residential streets seems to be non-existent.

And of course the waste water treatment issue needs to be resolved. I am amazed that we are getting such a late start on this important issue. Impact on the quality of life of townspeople and on visitors will be high unless this project is well planned and well executed.

Lastly, all town councils should remember that this is a democratic society and the voice of the people, even if there are just a few who choose to speak out, must be considered in the decision making process. It is not always just about revenue, it is about quality of life for citizens, taxpayers and voters.

Charles McHenry inside Yucca Valley

February 18, 2012, 3:17 PM

I like alt 1

I feel that this alternative is better than #2. However, I wish that something could have been included in the statement about maintaining a rural lifestyle and dark skies at night.

Rae Packard inside Yucca Valley

February 18, 2012, 2:33 PM

I like alt 1

It doesn't matter. Not allowing "disruptive" statements is preventing the REAL discussion of this issue. The Town of Yucca Valley does NOT have an efficient infrastructure, so why lie about it. For example, the waste water treatment facility is currently mythological, and even sidewalks along Route 62, our main thoro-fare, are sporadic at best. So, just state honestly that it will "continue to improve."

Name not shown inside Yucca Valley

February 8, 2012, 3:56 PM

I like alt 1

I prefer Alternative 1 purely for style. I presume this is a rough draft of the mission statement and will be proofread for proper punctuation.

Mike Lipsitz outside Yucca Valley

February 7, 2012, 5:17 PM

I like alt 1

Vision Statement

Which alternative of the General Plan Vision 2035 statement do you prefer?

All Participants around Yucca Valley who selected 'Alternative 1'

I prefer Alternative 1 with its "range of services." It leaves the impression of a more progressive community with choices suitable for diverse interests. The "... efficient and meet our community's needs" phrase in Alternative 2 leaves the impression that the elements described are adequate at best.

My overall impression of the 2035 Vision Statement, with either alternative, is that it is an excellent expression of a goal. I hope the Town Council, along with the public's encouragement and assistance, will strive to achieve that goal, as presently we fall a little short.

Robert (Bob) Thacher outside Yucca Valley

February 7, 2012, 4:04 PM

I like alt 1

Suggest you use the words "progressive" as relates to services (moving ahead with technology), and the word "historic" as relates to existing facilities (the product of the historical past).

The implication, of course, is that we're smart enough to avail ourselves of things that were not available 50 and 100 years ago as relates to progressive, and that we are also smart enough to appreciate and respect the historical past that got us to where we are today.

Vision Statement

Which alternative of the General Plan Vision 2035 statement do you prefer?

All Participants around Yucca Valley who selected 'Alternative 2'

Steve Whitten inside Yucca Valley

February 22, 2012, 7:24 AM

I like alt 2

I do not like either alternative. I feel both alternatives lack vision for the future, they tend to speak to current policies/practices.

Suggest the following:

"Our mission is to provide an open and effective Town government that protects the health,safety and welfare of its citizens, maintains a strong sense of community, nurtures prosperity, and creates the highest quality of life with the resources available"

Suggest the creation of a General Plan Advisory Committee. I participated in the GPAC for 29 Palms and discovered there are quite a few intelligent people in the community that added tremendous value to the process.

Suggest utilizing a GPAC would allow direct face to face engagement with the communtiy vice relying strictly on the internet for input.

Name not shown outside Yucca Valley

February 3, 2012, 12:49 PM

I like alt 2

I don't like semi-colons and Alternative 1 seems disjointed.

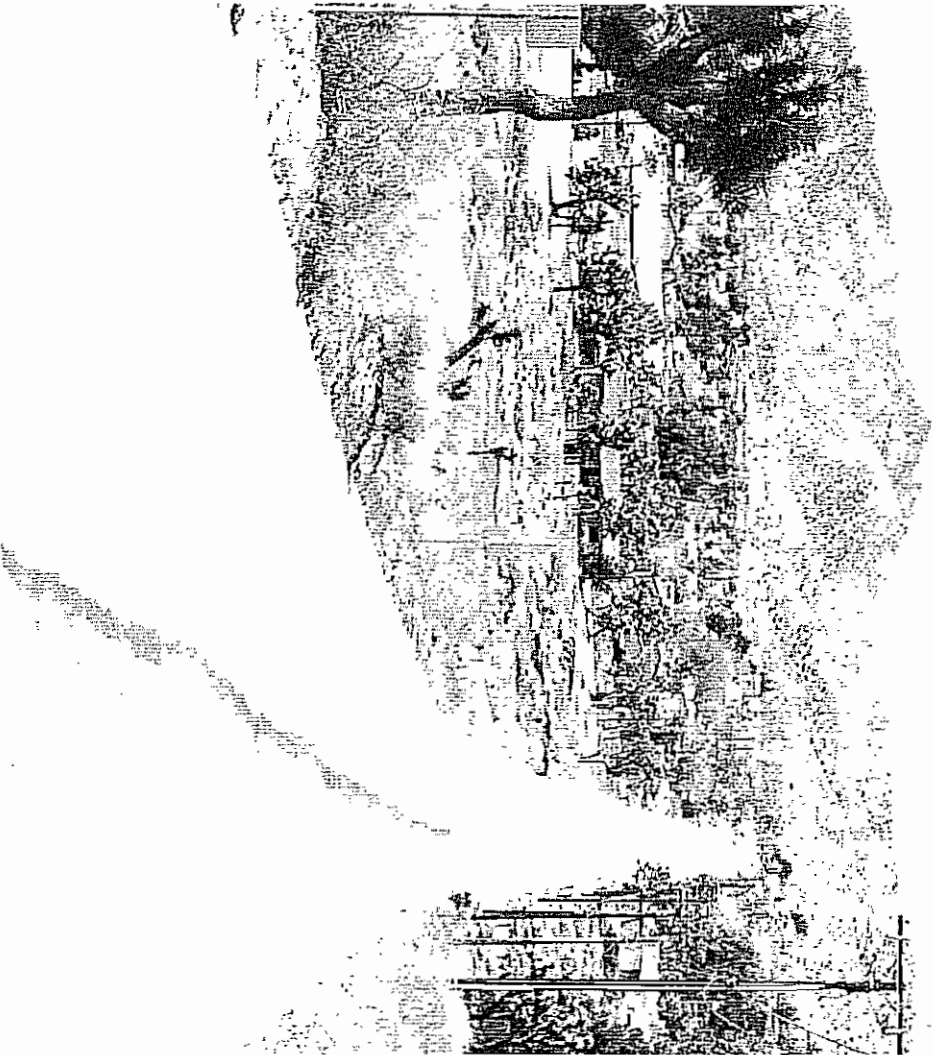


**TOWN OF YUCCA VALLEY
STRATEGIC PLANNING
WORKSHOP**

**Yucca Valley Community Center
January 27, 2012**

GENERAL PLAN:

VISION DEVELOPMENT



TODAY'S WORKSHOP: Refining the Vision

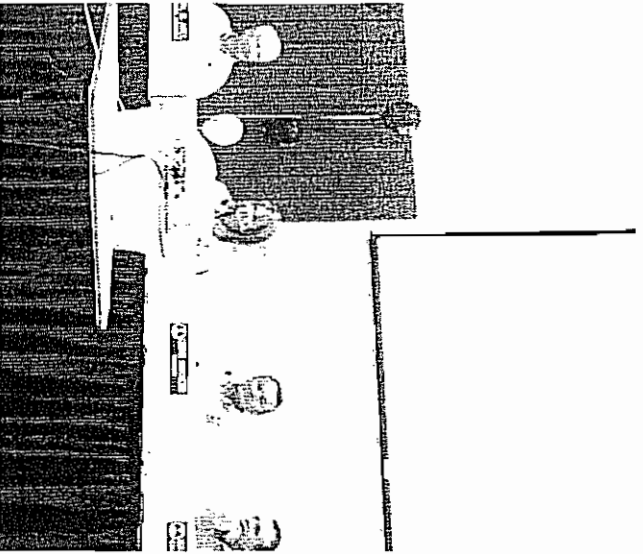
LIVES

- small town community feel
- cost of living for employees
- good community/low crime rates/good police presence
- captured market (city trade area)
- signing a for sale/lease/rent
- implied competition - have repeat customers (in comparison to larger cities)



WCAVAMBS 7 2025

- Successful shopping code not conditions
 - better zones between land uses
 - community meeting places (outdoor/plazas)
 - higher income demographics = keep small town feel
- WOW! WHAT A GREAT PLACE!**
- discuss retirement opps + neighborhoods
 - Develop Old Town SP
 - Increased efforts in basin wide collaboration
 - Town center w/ foundation + political interest



- Confirm community values
 - Refine the vision
 - Establish consensus for both
- Used to evaluate
General Plan Goals
and Policies

REFINING THE VISION & VALUES



- A vision statement is a formal expression of what the community wants to become
- Establish community priorities for the future
- Foundation for General Plan goals, policies, and actions

VISION HISTORY



- Yucca Valley Strategic Visioning Program (1995)
 - Part of General Plan preparation
 - Affirmation of community issues upon incorporation
- Introduction of revised vision (1999)
 - Vision, values, and mission statement
- Has not been revisited in over 3 years

HOW IS THE VISION USED?

The visioning process encourages the community to identify the future it wants and instigates a planning process to achieve it.

Values: Values express what really matters to the community

Goals: Goals are statements of desired future conditions

Policies: Policies are statements that guide decision-making

Actions: Actions are individual steps taken to implement one or more policies

PLANNING FOR THE FUTURE: *Vision 2035*



Vision should touch upon the five key elements of creating community:

- Social
- Physical
- Economic
- Environmental
- Governmental

CURRENT VALUES STATEMENT

Values express what matters to the community—beliefs about basic considerations that should apply to whatever the Town does.

As the Town of Yucca Valley, we value:

- **Honesty and integrity of government**
- **Fiscal responsibility**
- **Common sense approach in decision making**
- **Proactive leadership and problem solving**
- **Community participation in government and the decision-making process**
- **Accountability, responsibility and fair and equal response to citizen needs**
- **Stewardship and responsibility in caring for the scarce resources of our community**
- **User-friendly philosophy and citizen accessibility to Town government**
- **Flexibility in the midst of a changing community**
- **Equal opportunity within the Town government.**

SAMPLE REFINED VALUES

The refined values reflect input from the public outreach process.

We Value:

- **Small town atmosphere**
- **Balanced growth**
- **Stable neighborhoods**
- **Fiscal sustainability**
- **High-quality community services**
- **State-of-the art infrastructure**
- **Strong economy**
- **Desert environment and natural resources**
- **Arts and culture**
- **Community pride and participation**

CURRENT VISION STATEMENT

The Town of Yucca Valley will be a safe and attractive community with state-of-the art infrastructure and high quality services that meet the needs of its citizens in a fiscally-sound manner, through:

- Honest and responsible government
- Sound fiscal management
- Effective partnerships
- Preservation of the land and natural resources
- Balanced growth that enhances economic development and quality of life
- Constant evaluation of ourselves, our procedures, our policies, in terms of providing the best government and representation that meets the needs of the people of Yucca Valley.

BUILDING A Y20V35 VISION STATEMENT

The Town of Yucca Valley is ...

As a destination, visitors are drawn to ...

Our high-quality ...

... define our community and quality of life

Our commitment to ...

... are the cornerstones of our community

TODAY'S WORKSHOP: Refining the Y20V35 vision

The Town of Yucca Valley is...

an attractive place to live,

the economic hub of the Morongo Basin,

a sought after place to visit,

while maintaining its small Town atmosphere

TODAY'S WORKSHOP: Refining the Y20V35 vision

As a destination, visitors are drawn to our...

arts & culture,

history,

desert environment,

night skies,

active open space

TODAY'S WORKSHOP: Refining the Y20V35 vision

Our...

high-quality services and facilities,

state-of-the art infrastructure,

safe and stable neighborhoods,

unique character,

diversity,

...define our community and quality of life.

TODAY'S WORKSHOP: *Refining the Y20V35 vision*

Our commitment to...

balanced growth,
environmental stewardship,
fiscal sustainability,
active citizen participation,
property rights

...are the cornerstones of our community.



TOWN OF YUCCA VALLEY
GENERAL PLAN

QUESTIONS?

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Alex Qishta, Project Engineer
Date: March 13, 2012
For Council Meeting: March 20, 2012

Subject: Church Street Improvements – Town Project No.8348
Award of Construction Contract

Prior Council Review: The Town Council appropriated funds for this project with adoption of the FY 2011/2012 Budget.

Recommendation: That the Town Council:

- 1. Waives, based on the findings and substantial evidence described below, the minor defects in the bid consisting of the bidder's failure to remove, following an addendum issued by the Town, costs of curb ramp construction from the bid documents, finding that the bid submitted by United Paving Company Inc., substantially conforms to the Call for Bids and the defect in the bid did not affect the lowest responsible and responsive bidder determination, nor was any bidder given an advantage or benefit not allowed other bidders. Moreover, the defect in the United Paving Company Inc., proposal do not relate to, or impact, the issue of bidder responsibility;
2. Awards the construction contract, pending final property acquisition by San Bernardino County Superior Court, to United Paving Company, Inc., in the amount of \$151,863.00; and, authorizes a construction contingency in the amount of \$10,137.00, for a total contract amount of \$162,000, authorizing the Mayor, Town Manager and Town Attorney to sign all necessary documents, and authorizing the Town Manager to expend the contingency fund, if necessary, to complete the project.

Executive Summary: Project No. 8384 involves the rehabilitation of pavement on Church Street, from Joshua Drive to Onaga Trail. The project improvements include pavement rehabilitation, installation of concrete curb and gutter, driveways, and pavement markings. The project is contained in the Fiscal Year 2011-12 Capital Improvement Program.

Reviewed By: [Signature] Town Manager, [Signature] Town Attorney, [Signature] Mgmt Services, SRS Dept Head

Department Report, Ordinance Action, Resolution Action, Public Hearing, Consent, Minute Action, Receive and File, Study Session

Order of Procedure:

- Request Staff Report
- Request Public Comment
- Council Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote, Consent Agenda)

Discussion: On February 28, 2012, the Town received 11 bids for Project No. 8348 as follows:

BIDDER	BID AMOUNT
United Paving Company, Inc.	\$151,863.00
Ruiz Concrete and Paving, Inc.	\$163,326.04
Cooley Construction, Inc.	\$176,413.00
KAD Paving Company	\$180,097.50
Tri-Star Contracting II, Inc.	\$207,929.00
MPG, Inc.	\$208,796.00
ANM Construction and Engineering	\$210,958.00
Panorama General Engineering, Inc.	\$216,400.00
Lee and Stires, Inc.	\$223,709.50
COPP Contracting, Inc.	\$271,545.00
Matich Corporation	\$288,000.00

During the bid period, the Town issued an Addendum to all plan holders directing them to remove 6 concrete curb ramps from the bid schedule. The apparent low bidder failed to remove that item from their bid. The apparent low bidder has submitted a letter to the Town acknowledging the minor defect and their willingness to accept the contract with the revised amount. By removing the curb ramp bid amount from the bid, the revised bid amount is \$151,863.00. The apparent low bidder remains as the apparent low bidder, both with and without the concrete curb ramp costs.

The lowest bidder was United Paving Company, Inc. of La Mirada, California, with a bid of \$151,863.00. The Town has reviewed all 11 bid packages, and confirmed that United Paving Company, Inc. is the lowest responsible and responsive bidder.

A bid defect is waivable by the Council as "inconsequential" if the defect does *not* affect the amount of the bid in a way that gives one bidder an advantage of benefit not allowed to other bidders. Staff recommends that United's failure to remove certain curb ramps from their bid qualifies as such an inconsequential defect because United's clerical error did not materially change the amount of the bid. The law is intended to protect the competitive

process from bidders who commit "mistakes" that result in an estimate that is *lower* than would have been the case absent the mistake—i.e., to prevent "understated" bids. Here, United's clerical error actually overstated its bid, and waiver of the mistake would render the bid even lower. Because United's error did not change the fact that United is the lowest bidder, the error could neither influence other bidders to refrain from bidding nor affect the Council's ability to make bid comparisons. Finally, the error could not have given United an unfair competitive advantage or served as a vehicle for favoritism because United's bid is the lowest and most competitive submittal regardless of whether the error is included.

If awarded by the Town Council, construction is anticipated to begin in April 2012, and to be substantially completed in June 2012.

Alternatives: Staff recommends no alternative action. While the bid submitted by United Paving Company, Inc., contained a defect, United Paving Company, Inc., is the apparent low bidder both with and without the curb ramps. The Town Council may elect to reject all bids and authorize the Town Clerk to re-advertise Project No. 8348.

Fiscal impact: The estimated project costs, as well as the available funding in the adopted FY 11-12 CIP, are summarized below.

Estimated Project Cost

Basic Bid Amount	\$151,863.00
Construction Contingency	\$10,137.00
Total Contract Work:	\$162,000.00

Funding

2011/12 CIP Capital Project Reserve	\$160,186.00
Measure I Local Roads	\$2,755
Total Project Funding:	\$162,941.00

The Town Engineer's cost estimate for the project was \$138,500 without contingency. The Engineer's estimate was based upon asphalt costs at \$80.00 per ton. As seen with the recent cost increases for petroleum based product, asphalt unit costs reached \$100 per ton in the bidding for this project.

The project is budgeted in two accounts in the 2011/2012 adopted budget; Capital Projects Reserve account # 800 5559 8310 8348 000 (\$160,186), and Measure I Local Roads account # 523 5559 9310 8348 000 (\$2,755), for a total project remaining balance of \$162,941.

Attachments: Bidders Summary List
United Paving Company, Inc., Bid (all bids received are available for inspection at the Town Clerk's Office at Town Hall)

TOWN OF YUCCA VALLEY
 BID OPENING LOG SHEET

BID OPENING DATE: February 28, 2012, 3:00 p.m.

PROJECT DESCRIPTION: Church Street Improvements

BIDDER:	BID AMOUNT	BID BOND
1. <u>Ann Conat & Engineering</u>	<u>210,938</u>	<u>10%</u>
2. <u>Cass Contracting, Inc.</u>	<u>271,545</u>	<u>10%</u>
3. <u>United Paving Co</u>	<u>161,103</u>	<u>10%</u>
4. <u>NPG Corporation</u>	<u>208,796</u>	<u>10%</u>
5. <u>Matish Corp</u>	<u>288,000</u>	<u>10%</u>
6. <u>Lead Streets, Inc.</u>	<u>223,709.50</u>	<u>10%</u>
7. <u>Tristia Contracting, Inc.</u>	<u>207,929</u>	<u>10%</u>
8. <u>Ked Paving Co.</u>	<u>180,097.50</u>	<u>10%</u>
9. <u>Armas General Contracting</u>	<u>210,400.00</u>	<u>10%</u>
10. <u>Cooley Const.</u>	<u>170,413</u>	<u>10%</u>

CC: Town Clerk's Staff (1)
 Initiating Department (2)
 Town Manager (1)

Signed: [Signature]
 Dated: 2/28/12


TOWN OF YUCCA VALLEY
BID OPENING LOG SHEET

BID OPENING DATE: February 28, 2012, 3:00 p.m.

PROJECT DESCRIPTION: Church Street Improvements

BIDDER:	BID AMOUNT	BID BOND
11 <u>Reis Construction Paving</u>	<u>103,326.⁰⁴</u>	<u>10,000</u>
12 _____	_____	_____
13 _____	_____	_____
14 _____	_____	_____
15 _____	_____	_____
16 _____	_____	_____
17 _____	_____	_____
18 _____	_____	_____
19 _____	_____	_____
20 _____	_____	_____

CC: Town Clerk's Staff (1)
Initiating Department (2)
Town Manager (1)

Signed: 
Dated: 02/28/2012

CONTRACTOR'S PROPOSAL

Superior Paving Company, Inc.
dba United Paving Company
Company

14660 Industry Circle
Address

La Mirada, CA 90638

714-739-2200
Telephone Number

865828
State License Number

Town of Yucca Valley
57090 29 Palms Highway
Yucca Valley, California 92284

Ladies and Gentleman:

Pursuant to the Public Notice inviting bids or proposals, the undersigned declares that he has carefully examined the location of the proposed work, that he has examined plans, profiles, and specifications for **Project 8348: Church Street Improvements**, and read the accompanying proposal requirement, and hereby proposes to furnish all materials and do all work required to complete the said work in accordance with said plans, profiles, specifications, and special provisions for the unit or lump sum price set forth in the Schedule of Work Items.

Unless otherwise specified by the Contractor, the listing of an Item No. of Work shall be conclusive evidence that the subcontractor proposed to perform the Item of Work and shall perform the entirety of the work for that Item No. of Work.

All persons or parties submitting a bid proposal on the project shall complete the following form setting forth the Item Number (as specified in the "Schedule of Work Items"), the name, location, and place of business of each subcontractor who will perform work or labor or render services to the prime Contractor in or about the construction of the work of improvements, or a subcontractor licensed by the State of California, who, under subcontract to the prime Contractor, specially fabricates and installs a portion of the work or improvements according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent (1/2%) of the prime Contractor's total bid, or, if the bid is for the construction of streets or highways, including bridges, in excess of one-half of one percent (1/2%) of the prime Contractor's total bid or ten thousand dollars (\$10,000.00), whichever is greater.

It is noted that if a Contractor fails to specify a subcontract for any portion of the work to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself, and he shall not be permitted to subcontract that portion of the work except by written consent of the awarding authority. The requirement of the submission of this list, the legal consequences for failure of the Contractor to do so, and other particular details concerning the same shall be as set forth in the "Subletting and Subcontracting Fair Practices Act", California Public Contract Code (§ 4100, *et seq.*) to which the bidder is hereby referred.

Item No. of Work	Name of Firm or Contractor	Location of Mill, Shop or Office	Contractor Classification (if applicable)	Town of Yucca Valley Business License No. *
5,6,7,8	Verdin Concrete, Inc	5487 Sunset Ridge Rd. Riverside, CA 92509	LIC # 730587 C-8	Pending Award of Contract
4	Precision Engineering Surveyors, Inc.	7231 Boulder Ave #531 Highland, CA 92346	LIC # L53983 C-L	"
14	J.P. Striping, Inc.	450 E. First St. Bellmont, CA 92223	LIC # 655922 ST 746266 C-32	"

* All Subcontractors are required to obtain a Town of Yucca Valley Business License before a Notice to Proceed may be issued.

The undersigned further agrees that in case of default in executing the required contract with necessary bonds within **ten (10) calendar days** after the notice of award of contract has been mailed, the proceeds of the check or bond accompanying his bid shall become the property of the Town. If the Town awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. The undersigned further agrees to complete the work within **sixty (60) calendar days** from the execution of the first contract. Project must be completed by May 31, 2012.

Contractor, and any subcontractors utilized, shall be licensed in accordance with the provisions of the Contractor's License Law, Chapter 9 of Division 3 of the State Business and Professions Code. Additionally, the Contractor must have at the time of bid opening for this project the following classification(s) of Contractor's license and experience:

Classification A: General Engineering Contractor

Classification C-12: Earthwork and Paving Contractor

SCHEDULE OF WORK ITEMS "A"

Project No. 8348,
Church Street Improvements

ITEM NO.	QUANTITY	UNIT	DESCRIPTION WITH UNIT PRICE <u>WRITTEN IN WORDS</u>	UNIT PRICE IN FIGURES	AMOUNT
1	1	LS	Storm Water Pollution Prevention/ Erosion Control <u>One thousand dollars</u>	<u>\$1,000.⁰⁰</u>	<u>\$1,000.⁰⁰</u>
2	1	LS	Traffic Control and Safety <u>Three thousand dollars</u>	<u>\$3,000.⁰⁰</u>	<u>\$3,000.⁰⁰</u>
3	1	LS	Clearing, Grubbing, and Grading <u>One thousand dollars</u>	<u>\$1,000.⁰⁰</u>	<u>\$1,000.⁰⁰</u>
4	1	LS	Construction Survey <u>Three thousand dollars</u>	<u>\$3,850.⁰⁰</u>	<u>\$3,850.⁰⁰</u>
5	1200	LF	Construct P.C.C. 8" Curb & Gutter <u>nineteen dollars and ^{eighty}eighty cents</u> (ST)	<u>\$19.⁸⁰</u>	<u>\$23,760.⁰⁰</u>
6	2000	SF	Construct P.C.C. Cross Gutter and Spandrel <u>four dollars and ninety five cents</u>	<u>\$4.⁹⁵</u>	<u>\$9,900.⁰⁰</u>
7	6	EA	Construct P.C.C. Driveway Approach <u>one thousand nine hundred eighty dollars</u>	<u>\$1,980.⁰⁰</u>	<u>\$11,880.⁰⁰</u>
8	6	EA	Construct P.C.C. Curb Ramp <u>one thousand five hundred forty dollars</u>	<u>\$1,540.⁰⁰</u>	<u>\$9,240.⁰⁰</u>
9	800	TON	Construct Asphalt Concrete Pavement <u>ninety seven dollars and eighty cents</u>	<u>\$97.⁸⁰</u>	<u>\$78,240.⁰⁰</u>

ITEM NO.	QUANTITY	UNIT	DESCRIPTION WITH UNIT PRICE <u>WRITTEN IN WORDS</u>	UNIT PRICE IN FIGURES	AMOUNT
10	850	LF	Construct 6" A.C. Dike <u>nine dollars and thirty eight cents.</u>	<u>\$9.38</u>	<u>\$7,973.00</u>
11	4	Ea.	Adjust Water Valve to Grade <u>thirty dollars</u>	<u>\$30.00</u>	<u>\$120.00</u>
12	2	Ea.	Restore Rock Wall and Landscaping <u>One thousand nine hundred dollars</u>	<u>\$1,900.00</u>	<u>\$3,800.00</u>
13	1	Ea.	Relocate Existing Mailbox <u>Seventy dollars</u>	<u>\$70.00</u>	<u>\$70.00</u>
14	1	LS	Pavement Markers, Markings, Legends, Striping, and Signages <u>Six thousand two hundred Seventy dollars</u>	<u>\$6,270.00</u>	<u>\$6,270.00</u>
15	2	Ea.	Construction Project Signs <u>five hundred dollars</u>	<u>\$500.00</u>	<u>\$1,000.00</u>

TOTAL PRICE FOR ITEMS 1-15

\$161,103.00

TOTAL PRICE IN WORDS:

One hundred sixty one thousand one hundred three dollars and zero cents.

BIDDER: Superior Paving Company, Inc dba United Paving Company

BY: [Signature] DATE 2/28/12

Sabias Trujillo - President

(If an individual, so state. If a firm or co-partnership, state the firm name and give names of all individual co-partners composing the firm. If a corporation, state legal name of corporation, also names of President, Secretary, Treasurer, and Manager thereof.)

Superior Paving Company, Inc dba

United Paving Company

Sabias Trujillo (President, Vice President

Secretary, Treasurer)

14666 Industry Circle

La Mirada, CA 90638

Business Address

Dated: February, 2012.

By: [Signature]
Sabias Trujillo - President

By: [Signature]
Sabias Trujillo - Secretary

By: [Signature]
Sabias Trujillo - Treasurer

NON-COLLUSION AFFIDAVIT

To: The City of Upland:

State of California

County of Los Angeles) ss.

Sabias Trujillo

being first duly sworn, deposes

and says that he or she is President of Superior Paving Company, Inc. dba United Paving Company the party making the foregoing bid that the bid is not made in the interest

of or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder of any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.



Signature

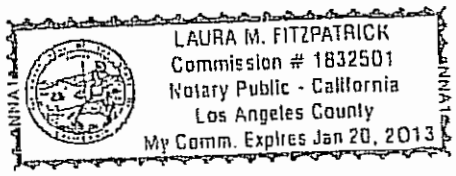
STATE OF CALIFORNIA)

COUNTY OF Los Angeles) ss.

Subscribed and sworn to before me this 28 day of February, 2012

Laura M. Fitzpatrick
Notary Public in and for the County
of L.A. County, State of California.

My Commission expires 01/20/2013, 20 .



DECLARATION OF ELIGIBILITY TO CONTRACT
[Labor Code Section 1777.1; Public Contract Code Section 6109]

The undersigned contractor, certifies and declares that:

1. The undersigned contractor is aware of Sections 1771.1 and 1777.7 of the California Labor Code, which prohibit a contractor or subcontractor who has been found by the Labor Commissioner or the Director of Industrial Relations to be in violation of certain provisions of the Labor Code, from bidding on, or being awarded, or performing work as a subcontractor on a public works project for specified periods of time.

2. The undersigned contractor is not ineligible to bid on, be awarded or perform work as a subcontractor on a public works project by virtue of the foregoing provisions of Sections 1771.1 or 1777.7 of the California Labor Code or any other provision of law.

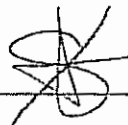
3. The undersigned contractor is aware of California Public Contract Code Section 6109, which states:

“(a) A public entity, as defined in Section 1100 [of the Public Contract Code], may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1771.1 or 1777.7 of the Labor Code to bid on, be awarded, or perform work as a subcontractor on, a public works project. Every public works project shall contain a provision prohibiting a contractor from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(b) Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the awarding body. The contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.”

4. The undersigned contractor has investigated the eligibility of each and every subcontractor the undersigned contractor intends to use on this public works project, and determined that none of them is ineligible to perform work as a subcontractor on a public works project by virtue of the foregoing provisions of the Public Contract Code, Sections 1771.1 or 1777.7 of the Labor Code, or any other provision of law.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26 day of February, 2012, at La Mirada, CA, California.
(place of execution)



Signature

Sabas Toujillo

Name (print or type)

President

Title

Superior Paving Company, Inc.
dba United Paving Company

Name of company

February 27, 2012

To: All Bidders - Town of Yucca Valley Project 8384, Church Street Improvements

From: Alex Qishta, Project Engineer

Subject: Addendum No. 1

Addendum No. 1 is attached. Please sign the attached letter acknowledging receipt of Addendum No. 1 and include it in your bid.

TOWN OF YUCCA VALLEY
ENGINEERING DIVISION

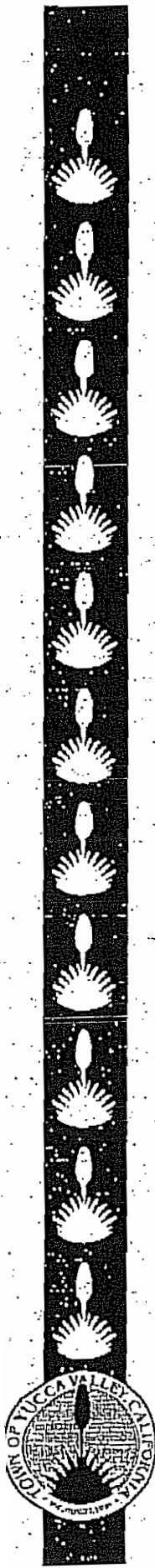


Alex Qishta, P.E.
Project Engineer

Planning
(760) 369-6575
Public Works
(760) 369-6579
Building and Safety
(760) 365-0099
Code Compliance
(760) 369-6575
Engineering
(760) 369-6575
Animal Control
(760) 365-1807
Animal Shelter
(760) 365-3111
FAX (760) 228-0084

The Town of
Yucca Valley

COMMUNITY DEVELOPMENT/PUBLIC WORKS DEPARTMENT
58928 Business Center Dr.
Yucca Valley, California 92284



ADDENDUM NO. 1

TO THE
BID DOCUMENTS
FOR

PROJECT 8348

CHURCH STREET IMPROVEMENTS

To: ALL BID DOCUMENT HOLDERS

The bid documents for this bid have been amended as follows:

1. Page SP-3, Section 4.0 TIME OF COMPLETEION revised to read

"The Contractor shall begin work within ten (10) working days after the date of the "Notice to Proceed," and shall diligently prosecute the same to completion by Sixty (60) working days after date in said Notice.

2. Page CP-4, Item 8, Construct P.C.C. Curb Ramp, please change quantities to zero (0).

3. Please Replace Page SP-13 with attached page.

4. Page SP-22, BID ITEM2: TRAFFIC CONTROL: To be modified as follow:

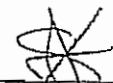
"All traffic control operations and devises proposed for use on this project shall conform to the project traffic control plans, prepared by the Town Contractor, and the Special Provisions as contained herein."

TOWN OF YUCCA VALLEY
ENGINEERING DIVISION



Alex Qishta
Project Engineer

Acknowledgment of Receipt
ADDENDUM NO. 1



Signature of Bidder

Sabas Trujillo - President

Contractor shall maintain access to all businesses during construction. All excavations shall be backfilled, compacted and all damaged private improvements are to be restored immediately after installation of improvements in that area. If, in the opinion of the Engineer, the Contractor is not conforming to these requirements, the Engineer may order the job to be made safe and all other work halted until a meeting can be held to determine the reasons for noncompliance and to resolve the situation. Contractor is advised that gravel, cobbles and boulders will be encountered during excavation of the project. Contractor is responsible for the removal and proper disposal of all such material. Compensation for said removal shall be considered as included in various bid items. Additional compensation will not be provided therefore.

10.1 Staged Construction

The Contractor shall plan and prosecute the construction to comply with the following phasing requirements:

Completion of the new curb and gutter shall be performed prior to removal of the existing curb and gutter on ~~Feetbill Boulevard~~ Church Street, except as necessary to provide/maintain access to adjacent businesses. ~~Selected portion of the existing curb/gutter on SR62 and SR247 shall be removed and temporary pavement shall be constructed as directed by the Town Engineer to provide access to adjacent businesses.~~

~~Construction of the raised median on SR62 and SR247 shall be staged in a manner as not to further constrain travel width on SR62 and SR247, while curb/gutter is being constructed on the north and south parkway/sidewalk.~~

~~The Contractor shall maintain the maximum number of travel lanes to the maximum extent practicable during the construction of pavement on SR62 and SR247. One travel lane in each direction must be maintained open at all times. The Contractor may be required to perform night time construction, should roadway closure is required. No additional compensation shall be provided for night time construction, should the Contractor fail to maintain one travel lane in each direction.~~

The Contractor shall plan and prosecute the work such that all lanes of traffic are open during non-working hours. No lane closures will be permitted between the hours of 4:00 p.m. and 8:00 a.m. unless authorized by the Engineer.

The Contractor shall install steel trench plates and other devices as necessary to restore full use of the traveled way during non-working hours. The steel plates shall be sized as necessary to support vehicular traffic loading across open excavations and newly poured concrete crosswalks without sustaining damage to the new improvements.

~~The Contractor is hereby advised that SR62 and SR247 traffic signals located thereon are under the jurisdiction of Caltrans. No additional compensation shall be provided for the adjustment(s).~~

THE AMERICAN INSTITUTE OF ARCHITECTS



ALA Document A310

Bid Bond

Bond No. N/A

KNOW ALL MEN BY THESE PRESENTS, that we Superior Paving Company, Inc. dba United Paving Co. 14660 Industry Circle La Mirada, CA 90638

(Here insert full name, and address or legal title of Contractor) as Principal, hereinafter called the Principal, and Merchants Bonding Company (Mutual)

a corporation duly organized under the laws of the State of Iowa as Surety, hereinafter called the Surety, are held and firmly bound unto Town of Yucca Valley 57090 29 Palms Highway Yucca Valley, CA 92284 (Here insert full name, and address or legal title of Owner) as Obligee, hereinafter called the Obligee, in the sum of (10%) Ten percent of the attached bid amount for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Project 8348: Church Street Improvements

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid then this condition shall be null and void, otherwise to remain in full force and effect.

and sealed on February 24, 2012

STEVE FITZPATRICK - V.P. of SALES

Superior Paving Company, Inc. dba United Paving Co. (Principal) (Seal)

Subcis Trujillo - President (Seal)

Merchants Bonding Company (Mutual) (Seal)

(Title) Mark Richard P. 124

Theresa Kruep

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of Orange }

On 2/24/12 before me, Irene Luong, Notary Public
Date Here Insert Name and Title of the Officer

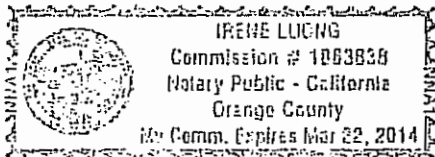
personally appeared Mark Richardson
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature *Irene Luong*
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

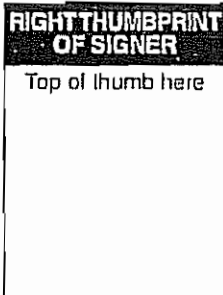
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Mark Richardson

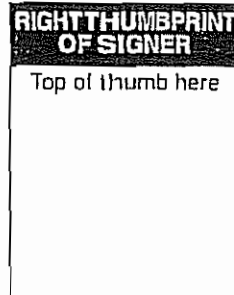
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

MERCHANTS
BONDING COMPANY
POWER OF ATTORNEY

Know All Persons By These Presents, that the MERCHANTS BONDING COMPANY (MUTUAL), a corporation duly organized under the laws of the State of Iowa, and having its principal office in the City of Des Moines, County of Polk, State of Iowa, hath made, constituted and appointed, and does by these presents make, constitute and appoint

Eric Lowey, Mark Richardson, Stephanie Hoang, Shawn Blume

of Costa Mesa and State of California its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to sign, execute, acknowledge and deliver in its behalf as surety any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

SEVEN MILLION (\$7,000,000.00) DOLLARS

and to bind the MERCHANTS BONDING COMPANY (MUTUAL) thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the MERCHANTS BONDING COMPANY (MUTUAL), and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following Amended Substituted and Restated By-Laws adopted by the Board of Directors of the MERCHANTS BONDING COMPANY (MUTUAL) on November 16, 2002.

ARTICLE II, SECTION 8 - The Chairman of the Board or President or any Vice President or Secretary shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

ARTICLE II, SECTION 9 - The signature of any authorized officer and the Seal of the Company may be affixed by facsimile to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed.

In Witness Whereof, MERCHANTS BONDING COMPANY (MUTUAL) has caused these presents to be signed by its President and its corporate seal to be hereto affixed, this 26th day of August, 2011.



MERCHANTS BONDING COMPANY (MUTUAL)

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF POLK ss.

On this 26th day of August, 2011, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL), the corporation described in the foregoing instrument, and that the Seal affixed to the said instrument is the Corporate Seal of the said Corporation and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



Cindy Smyth
Notary Public, Polk County, Iowa

STATE OF IOWA
COUNTY OF POLK ss.

I, William Werner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL), do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said MERCHANTS BONDING COMPANY (MUTUAL), which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Company on this 24th day of February, 2012.



William Werner Jr.
Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS Angeles

On 2/28/2012 before me, Laura M. Fitzpatrick, Notary Public

personally appeared Subas Trujillo

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Laura M. Fitzpatrick
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Administrative Services Director
Date: March 12, 2012
For Council Meeting: March 20, 2012
Subject: Warrant Register March 20, 2012

Recommendation:

Ratify the Warrant Register total of \$ 256,927.51 for checks dated March 8, 2012. Ratify Payroll Register total of \$ 145,372.58 for checks dated March 2, 2012.

Order of Procedure:

Department Report
Request Staff Report
Request Public Comment
Council Discussion
Motion/Second
Discussion on Motion
Call the Question (Roll Call)

Attachments:

Payroll Register No. 36 dated March 2, 2012 total of \$ 145,372.58
Warrant Register No. 39 dated March 8, 2012 total of \$ 256,927.51

Reviewed By:


Town Manager


Admin. Services

Town Attorney

Department Report
 Consent

Ordinance Action
 Minute Action

Resolution Action
 Receive and File

Public Hearing
 Study Session

TOWN OF YUCCA VALLEY

**PAYROLL REGISTER #36
CHECK DATE - March 02, 2012**

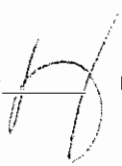
Fund Distribution Breakdown

Fund Distribution

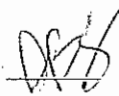
General Fund	\$126,559.25
Gas Tax Fund	10,550.32
Successor Agency	<u>8,263.01</u>

Grand Total Payroll	<u><u>\$145,372.58</u></u>
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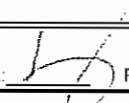
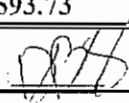
Prepared by P/R & Financial Specialist:



Reviewed by H/R & Risk Mgr.:



Town of Yucca Valley
Payroll Net Pay & Net Liability Breakdown
 Pay Period 36 - Paid 03/02/2012
 (February 11, 2012 - February 24, 2012)
 Checks: 4279-4289

	Employee	Employer	Total
<u>Net Employee Pay</u>			
Payroll Checks	\$3,777.65		\$3,777.65
Direct Deposit	73,392.40	-	73,392.40
Sub-total	77,170.05		77,170.05
<u>Employee Tax Withholding</u>			
Federal	12,204.55		12,204.55
Medicare	1,546.82	1,546.77	3,093.59
SDI - EE	-	-	-
State	4,000.98		4,000.98
Sub-total	17,752.35	1,546.77	19,299.12
<u>Employee Benefit & Other Withholding</u>			
Health Benefit Account Credit	-	-	-
Deferred Compensation	2,614.94	1,352.36	3,967.30
PERS Survivor Benefit	42.00		42.00
Health Café Plan	2,331.57	13,505.44	15,837.01
American Fidelity Pre-Tax	259.76		259.76
American Fidelity After-Tax	12.15		12.15
American Fidelity-FSA	681.29		681.29
PERS EE - Contribution 7%	716.80		716.80
PERS EE - Contribution 8%	6,564.38		6,564.38
PERS Retirement - Employee	-	791.87	791.87
PERS Retirement - Employer	-	14,503.16	14,503.16
Wage Garnishment - Employee	448.44		448.44
Life & Disability Insurance		989.84	989.84
Unemployment Insurance		1,022.37	1,022.37
Workers' Compensation		3,067.04	3,067.04
Sub-total	13,671.33	35,232.08	48,903.41
Gross Payroll	\$108,593.73	\$36,778.85	\$145,372.58
Prepared by P/R & Financial Specialist:  Reviewed by H/R & Risk Mgr: 			

WARRANT REGISTER # 39
CHECK DATE - MARCH 8, 2012



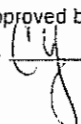
FUND DISTRIBUTION BREAKDOWN

Checks # 40001 to # 40107 are valid
Checks # 40001-40007 are void

GENERAL FUND # 001	\$82,929.57
CENTRAL SUPPLIES FUND # 100	\$1,692.05
CUP DEPOSITS FUND # 200	\$8,594.25
ASSET SEIZURE FUND # 508	\$250.00
COPS SLESF FUND # 509	\$38.01
AB 2928 STATE CONSTRUCTION FUND # 513	\$14,196.05
GAS TAX FUND # 515	\$15,420.19
MEASURE I MAJOR ARTERIAL FUND # 522	\$3,948.57
MEASURE I 2010-2040 FUND # 524	\$96.22
PUBLIC LANDS FEDERAL GRANT FUND # 527	\$15,850.00
CA ENERGY COMMISSION FUND # 540	\$95,767.83
HUD-JERRY LEWIS PARK FUND # 551	\$6,118.63
CDBG FUND # 560	\$1,212.60
CAPITAL PROJECTS FUND # 800	<u>\$10,813.54</u>

GRAND TOTAL

\$256,927.51

Prepared by Shirlene Doten, Finance  Approved by Mark Nuaimi, Town Manager 
Reviewed by: Curtis Yakimow, Admin Svc. Dir. 

Town of Yucca Valley

Warrant Register

March 8, 2012

Fund	Check #	Vendor	Description	Amount
001	GENERAL FUND			
	40102	Aleshire & Wynder, LLC	January 2012 Professional Svs.	\$5,816.21
	40103	AlSCO/American Linen, Inc.	Facilities Maintenance Supplies	144.35
	40105	Arrowhead Mountain Water	Office Supplies	75.17
	40038	Art Gutierrez	Sports Referee	96.00
	40106	AT & T Mobility	Cell Phone Service	353.22
	40107	Audio Dynamix	Portable Sound System	2,462.83
	40008	Ayers Distributing Co.	Recreation Program Expense	816.00
	40077	Beverly Schmuckle	Contract Instructor	72.80
	40058	Brent Murphy	Sports Referee	80.00
	40014	Cactus Flower	Town Council Recognition	61.42
	40011	Carol Boyer	Contract Instructor	56.00
	40016	Carquest Auto Parts	Vehicle Maintenance	148.93
	40018	Charles Abbott & Assoc, Inc.	Permit & Plan Check Svs.	5,009.98
	40020	City of Twentynine Palms	Basketball Registration	1,400.00
	40025	Cowboy Corral	Shelter Maintenance Supplies	452.55
	40061	Dan O'Dowd	Museum Video Production	2,500.00
	40017	Dennis Cavins	Sports Referee	36.00
	40029	Desert Pacific Exterminators	Facilities Maintenance	180.00
	40031	Ed Escalante	Sports Referee	48.00
	40032	Farmer Bros. Co.	Office Supplies	179.80
	40034	Fulton Distributing Co.	Facilities Maintenance Supplies	298.32
	40036	Graphic Penguin	Web Site Maintenance	1,560.00
	40009	Hazel Bader	Contract Instructor	70.00
	40039	HdL Hinderliter, DeLlamas & Assoc	Sales Tax Services	925.38
	40047	Heather Kaczmarczk	Contract Instructor	430.50
	40042	Hi-Desert Publishing	Public Hearing Notice Ad	50.00
	40041	Hi-Desert Water	Water Service	1,119.46
	40044	Intervet, Inc.	Shelter Adoption Expense	673.44
	40022	Janine Cleveland	Contract Instructor	73.50
	40069	Jean Quinn	Account Credit Refund	7.00
	40037	Joy Groves	Contract Instructor	344.40
	40050	Karly Lenniger	Recreation Class Refund	30.00
	40049	Knorr Systems, Inc.	YVHS Pool Chemicals	4,073.64
	40010	Kristine Bost	Contract Instructor	50.40
	40027	League of CA Cities Desert Mountain	2012 Membership Dues	500.00
	40051	Lew Edwards Group	Education & Outreach Consultant	4,850.00
	40015	Madison Cardamone	Sports Referee	72.00
	40033	Mae Fox	Contract Instructor	44.80
	40053	Mark S. Mahoney	Administrative Hearing Officer	200.00
	40055	Maximum Solutions, Inc.	Recreation Software Training	1,375.00
	40059	Morongo Unified School District	Fleet Fuel	6,484.13
	40057	MSC Industrial Supply Co.	Grubstake Days Expense	271.62
	40062	Oasis Office Supply	Office Supplies	1,706.27
	40064	Petty Cash-Michele Linzner	Miscellaneous Supplies	144.71
	40065	Pro Security	Facilities Maintenance	345.00
	40066	Pro Video	Town Council Taping	100.00
	40048	Roger Keezer	Contract Instructor	79.80
	40072	Ron Rice	CPRS Certification Seminar	248.50

Town of Yucca Valley

Warrant Register

March 8, 2012

Fund	Check #	Vendor	Description	Amount
	40013	Ronnie Burnette	Sports Referee	32.00
	40078	Rusty Scott	CPRS Certification Seminar	382.12
	40080	Sam Sloneker	Museum Event Expense	300.00
	40076	SCE	Electric Service	267.29
	40079	Simplot Partners, Inc.	Parks Maintenance & Supplies	1,993.38
	40081	So. Cal. Gas Co.	Natural Gas Service	2,967.21
	40082	Southwest Networks, Inc.	Technology Equipment	9,911.25
	40083	Sprint	Phone Service	8.26
	40084	Sterling Codifiers, Inc.	Professional Services	391.00
	40071	Steven Renegar	Contract Instructor	252.00
	40046	Susan Jordan	Contract Instructor	161.00
	40086	Tease Shirts	Recreation Programs Expense	5,330.33
	40087	The Company	Fleet Boom Truck Maintenance	350.00
	40054	The Mallants Corp	Temporary Employment Svs.	603.72
	40088	Time Warner Cable	Cable TV Service	60.43
	40090	Trophy Express	Recreation & Sports Programs	1,835.79
	40091	Unisource Worldwide, Inc.	Custodial Supplies	775.15
	40091	Unisource Worldwide, Inc.	Maintenance Supplies	1,605.24
	40092	Vagabond Welding Supply	Facilities Maintenance	163.78
	40096	Valley Independent	Employee Business Cards	162.97
	40093	VCA Yucca Valley Animal Hospital	Veterinary Services	956.50
	40094	Verizon	Phone Service	2,962.17
	40060	Viva Nelson	Contract Instructor	5.60
	40097	Walmart Community	Shelter Supplies	1,593.67
	40098	Western Self Storage	Storage Unit Rental	188.00
	40075	Whitney Rodriguez	Sports Referee	36.00
	40100	Yucca Valley Quick Lube	Fleet Vehicle Maintenance	113.83
	EFT	First Bankcard	Operating Expense & Meetings	2,725.80
	EFT	The Home Depot	Maintenance Supplies	677.95
Total 001	GENERAL FUND			\$82,929.57
100 INTERNAL SERVICE FUND				
	40028	Desert Images Office Equipment, Inc.	Color Copier Service Contract	\$1,018.34
	40035	GE Capital Corporation	Copier Lease	673.71
Total 100	INTERNAL SERVICE FUND			\$1,692.05
200 DEPOSITS FUND				
	40056	Art Miller, Jr.	Deposit Account Refund	\$1,124.00
	40023	CMH Consulting	Deposit Account Refund	3,205.90
	40024	Gerald Cooper	Deposit Account Refund	163.50
	40043	Imagepoint, Inc.	Deposit Account Refund	669.14
	40045	Jones Sign Co.	Deposit Account Refund	769.00
	40052	Morrison & Heard	Deposit Account Refund	2,302.21
	40062	Oasis Office Supply	Office Supplies	9.00
	40040	Rollie Heschong	Deposit Account Refund	351.50
Total 200	DEPOSITS FUND			\$8,594.25

Town of Yucca Valley

Warrant Register

March 8, 2012

Fund	Check #	Vendor	Description	Amount
508 ASSET SEIZURE FUND	40064	Petty Cash-Michele Linzner	Miscellaneous Supplies	\$250.00
Total 508 ASSET SEIZURE FUND				\$250.00
509 COPS-SLESF-FUND	40095	Verizon Wireless	Sheriff's Office Cell Phone	\$38.01
Total 509 COPS-SLESF-FUND				\$38.01
513 AB2928-STATE CONSTRUCTION FUND	40099	Willdan Associates	TCRP Project Services	\$14,196.05
Total 513 AB2928-STATE CONSTRUCTION FUND				\$14,196.05
515 GAS TAX FUND	40103	AlSCO/American Linen, Inc.	Street Uniforms Service	\$79.05
	40021	Clark Construc/Hal Scott Clark	Street Shoulder Maintenance	7,938.50
	40026	Crafco, Inc.	Asphalt Maintenance & Supplies	2,075.27
	40068	Quality Street Services, Inc.	Street Sweeping Services	3,520.00
	40076	SCE	Electric Service	52.19
	40085	Sunbelt Rentals	Streets Equipment Rental	965.10
	40089	Tops n Barricades	Streets Signs & Supplies	790.08
Total 515 GAS TAX FUND				\$15,420.19
522 MEASURE I MAJOR ARTERIAL FUND	40062	Oasis Office Supply	Hwy 62/247 Median Project	\$1,148.56
	40070	RBF Consulting	Hwy 62 Widening Project	2,800.01
Total 522 MEASURE I MAJOR ARTERIAL FUND				\$3,948.57
524 MEASURE I -2010-2040 FUND	40076	SCE	Electric Service	\$96.22
Total 524 MEASURE I -2010-2040 FUND				\$96.22
527 PUBLIC LANDS FEDERAL GRANT FUND	40063	Overland Pacific & Cutler, Inc.	PLHD Project Svs.	\$12,480.00
	40070	RBF Consulting	PLHD Project	3,370.00
Total 527 PUBLIC LANDS FEDERAL GRANT FUND				\$15,850.00
540 CA ENERGY COMMISSION FUND	40067	Joseph S. Putrino	EECBG Project	\$95,767.83
Total 540 CA ENERGY COMMISSION FUND				\$95,767.83
551 HUD- JERRY LEWIS PARK FUND	40019	Circle Mountain Biological Consult.	Biological Monitoring SS Park	\$3,112.53
	40062	Oasis Office Supply	SS Park Plans & Specs	2,931.10
	40104	Archaeological Information Center	SS Park Resource Study	75.00
Total 551 HUD- JERRY LEWIS PARK FUND				\$6,118.63
560 CDBG FUND	40074	RJM Design Group	CC Park Project	\$1,212.60
Total 560 CDBG FUND				\$1,212.60

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Mark Nuaimi, Town Manager
Date: March 14, 2012
For Council Meeting: March 20, 2012

Subject: Financing, Disposition and Development Agreement for Affordable Senior Housing Project

Prior Agency Review:

- The former Yucca Valley Redevelopment Agency ("Agency") authorized the release of the Request for Qualifications at its meeting of June 15, 2010.
The Agency approved the selection of National Community Renaissance of California (NCRC) as the development entity to deliver an affordable senior housing opportunity at its meeting of October 19, 2010.
The Agency reviewed site alternatives at its meeting of November 16, 2010 and recommended the Dumosa site as the preferred site for the proposed Project.
The Agency authorized an Exclusive Negotiating Agreement (ENA) with NCRC on December 21, 2010.
The Town Council approved the Yucca Valley Senior Affordable Housing Specific Plan (S01-11) and Conditional Use Permit (CUP 03-11) on May 17, 2011.
The Agency approved an Option Agreement providing site control of the Dumosa property on May 17, 2011.

Recommendation: It is recommended that the Town Council:

- Adopt the Resolution approving the Financing, Disposition and Development Agreement between the Town and National Community Renaissance of California ("NCRC") establishing the terms under which the Town will support development of a seventy-five (75) unit affordable senior housing project; and
Authorize the Town Manager, Mayor, and Town Attorney to execute all documents required to support the NCRC application for Tax Credits as part of a March Tax Credit Allocation submittal.

Reviewed By:

Town Manager

Town Attorney

Mgmt Services

Dept Head

X Department Report ___ Ordinance Action X Resolution Action ___ Public Hearing
___ Consent ___ Minute Action ___ Receive and File ___ Study Session

Executive Summary: On October 19, 2010, the former Yucca Valley Redevelopment Agency selected National Community Renaissance of California (NCRC) as their preferred development entity to deliver an affordable senior housing project in the Town of Yucca Valley. Since that selection, NCRC and the Town have made great strides to bring the concept of an affordable senior housing project to fruition by:

- Selecting the Dumosa / SR-62 site as a preferred location on November 16, 2010;
- Approving an Exclusive Negotiating Agreement (ENA) on December 21, 2010;
- Developing and approving the Yucca Valley Senior Affordable Housing Specific Plan (S01-11) and Conditional Use Permit (CUP 03-11) on May 17, 2011;
- Completing an application for HUD-202 funding;
- Completing an Application for HOME program funds through the County of San Bernardino in the amount of \$1,622,830;
- Securing Sec 518 USDA Permanent Financing in the amount of \$1,451,000

Earlier this year, the application for HUD-202 funds was unsuccessful. Nonetheless, NCRC and Town staff continued to pursue alternative funding sources. On March 13, 2012, the County Board of Supervisors approved allocation of HOME Program funds \$1.622 million towards the Yucca Valley Senior Affordable Housing Project.

The California Tax Credit Allocation Committee (TCAC) conducts two tax credit grant award cycles. Tax credit financing is a popular source of funding for affordable housing projects. Based upon recent grant cycles, NCRC and Town staff have worked to complete an application for the March 22, 2012 TCAC Cycle. If successful in acquiring tax credits, all the pieces of financing the project will be in place. The project application is seeking over \$14.1 million in tax credit financing.

One of the requirements for completion of a TCAC application is an executed Disposition & Development Agreement between the Town and NCRC, demonstrating the financial commitments of the Town to the project and the site control of the Dumosa property by NCRC through this agreement.

Order of Procedure:

- Request Staff Report
- Agency Questions of Staff
- Request Public Comment
- Agency Discussion
- Motion/Second
- Discussion on Motion
- Call the Question (Roll Call Vote)

Discussion:

Since receiving direction in December 2010, NCRC, Agency and Town staff has worked diligently in meeting the accelerated timelines associated with the various funding opportunities available to the project. Given the scope and quality of the proposed affordable housing project, it would not be possible for the Town to construct such an asset without the leveraging of other funding sources. The final funding source required for the project is Low Income Housing Tax Credits (LIHTC) awarded from the California Tax Credit Allocation Committee. If successful, this TCAC application will provide over 75% of the funding resources at \$14.1 million of the \$18.8 million of the project costs as indicated in the pro forma summary below.

SOURCES & USES OF FUNDS

Project Name: *Dumosa Ave. Project - 75 Senior DU - 9% LIHTC - sec 538, NON-PREVALING WAGE*
 Project Address: *Town of Yucca Valley, Ca* *Preliminary*
 Developer: *National CORE*

SOURCES: CONSTRUCTION		USES:	
Construction Loan	\$6,000,000 34%	Acquisition Costs/Closing	\$941,000
Town of Yucca Valley	\$1,577,000 9%	Architecture/Fees & Permits	\$2,225,000
LIHTC Equity	\$8,707,663 49%	Construction Cost	\$12,732,691
County of San Bernardino HOME funds	\$1,622,830 9%	Indirect Construction/Legal	\$524,654
		Developer's Fee	\$660,000
		Rent-Up Costs/Reserves	\$219,595
		Financing Costs	\$604,553
TOTAL	<u>\$17,907,493</u> 100%		<u>\$17,907,493</u>
SOURCES: PERMANENT		USES:	
Permanent Loan - Sec 518 USDA loan	\$1,451,000 8%	Acquisition Costs/Closing	\$941,000
Town of Yucca Valley	\$1,577,000 8%	Architecture/Fees & Permits	\$2,225,000
LIHTC Equity	\$14,141,556 75%	Construction Cost	\$12,732,691
County of San Bernardino HOME funds	\$1,622,830 9%	Indirect Construction/Legal	\$524,654
Deferred Dev Fee	\$80,000 0%	Developer's Fee	\$1,400,000
AHP	\$0 0%	Rent-Up Costs/Reserves	\$312,336
Fee waivers	\$0 0%	Financing Costs	\$736,706
TOTAL	<u>\$18,872,387</u> 100%		<u>\$18,872,387</u>

TCAC LIHTC Application Process

The TCAC application is a competitive process. Applicants from across the state submit proposals for consideration and are then evaluated based upon evaluation criteria summarized in the following table. In the vast majority of TCAC cycles, projects MUST receive maximum points to be competitive and the final decision is then based upon a tie-breaker that factors "local" funding versus the total project costs. The TCAC process also allocates funding to various regions across the state and has separate categories for urban versus rural designation.

The Yucca Valley Senior Affordable Housing project is projected to receive maximum points. The project is entitled (Eval Factor "G" – Readiness to Proceed), the site is adjacent to amenities (Eval Factor D(1) – Site Amenities), there are adequate public funds being provided through the HOME Program and Town loans (Eval Factor A(3) – Public Funds), NCRC has a fantastic track record as the General Partner, Management Company, and Service Amenities provider (various factors). Unlike the HUH-202 process, the TCAC application and evaluation is very transparent and defensible. Therefore, NCRC and Town staff believe we have a solid opportunity to apply during this March 2012 cycle.

VI. POINTS SYSTEM - SECTION 2: POINTS SYSTEM SUMMARY

Total Possible Points: 148, Minimum Points Required: 123
 (Do Not Submit An Application If You Do Not Have The Minimum Points Required)

	APPLICANT POINTS	MAXIMUM POINTS	TOTAL POINTS
A. Cost Efficiency, Credit Reduction, & Public Funds	0	20	0
A(1) <i>Cost Efficiency</i>	0	20	
A(2) <i>Credit Reduction</i>	0	20	
A(3) <i>Public Funds</i>	0	20	
B. General Partner & Management Company Experience	0	9	0
A(1) <i>General Partner Experience</i>	0	6	
A(2) <i>Management Company Experience</i>	0	3	
C. Housing Needs	0	10	0
D. Site & Service Amenities	0	25	0
D(1) <i>Site Amenities</i>	0	15	
D(2) <i>Service Amenities</i>	0	10	
E. Sustainable Building Methods	0	10	0
F. Lowest Income & 10% of Units Restricted @ 30% AMI	0	52	0
F(1) <i>Lowest Income</i>	0	50	
F(2) <i>10% of Units Restricted @ 30% AMI</i>	0	2	
G. Readiness to Proceed	0	20	0
H. Miscellaneous Federal and State Policies	0	2	0
*Negative Points (if any, please enter amount:)		NO MAX	0
Total Points:			0.0

AB-26 Uncertainties

Given the passage of AB-26 and Supreme Court decision of December 2011, there are a number of uncertainties that enter this TCAC cycle and affect ALL projects that include former Redevelopment Agency assets. NCRC staff have contacted the technical support staff at TCAC and they indicate that they understand that there are a series of steps that projects will be required to go through with their Oversight Boards prior to final approval. Moreover, the proposed Financing, Disposition and Development Agreement builds-in contingencies allowing the Town to work through AB 26 issues.

Town's Role In Transaction

The Town's participation in the Project is solely as a lender -- the Town is not participating in the Project as a developer or owner. Any actions by the Town which are not fully consistent with the Town's role as a lender are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable to the Developer. As such, the Project and the Town's participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

The total estimated cost of the Project is approximately \$18,872,387. This estimated cost includes the Site acquisition costs and the hard and soft costs of constructing the Project which will provide affordable housing to income-qualified seniors for a guaranteed 55-year term. The Town Council is being asked approve a Town Loan to NCRC in an amount equal to Six Hundred Thirty-Five Thousand, Dollars Even (\$635,000), to fund a portion of the actual costs for the development, construction and operation of the Project. About \$164,756.00 of the Town Loan proceeds have already been disbursed to NCRC by the Town for pre-construction Project entitlement costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to NCRC prior to, or upon, the Close of Escrow.

The fair market value of the Site was appraised at \$940,000 on March 9, 2011, which fair market value shall constitute NCRC's "Purchase Price" for the entire Site. NCRC shall purchase all Town's right, title and interests to the Site pursuant to a "Note" in favor of the Town for the full Purchase Price.

NCRC's repayment obligations to pay both the full amount of the Town Loan (\$635,000) plus the full Purchase Price (\$940,000) shall be secured as a single debt obligation owed by NCRC to the Town, totaling ONE MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND and 00/100 DOLLARS (\$1,575,00) (the "Note Amount"). The Note shall be a residual receipts loan and shall be in the Note Amount. Repayment of the Note, including all principal and accrued interest, shall be made in annual payments from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available, commencing in the first year after issuance of the Certificate of Occupancy for the Project, and any unpaid amounts shall accrue simple interest at a rate of one-half of one percent (0.5%) per annum. The unpaid balance of the Note, plus accrued interest, if not paid in full within the fifty-five (55) year term, is due and payable in full at the end of the fifty-five (55) year term.

Affordable Housing Financing, Disposition & Development Agreement

NCRC, Town staff, and Town legal counsel have structured an appropriate agreement to meet the requirements of the TCAC application while putting in place the structure for a long-term loan agreement between the Town and NCRC.

Council is being asked to approve the agreement and allow the Town Manager, Town Counsel, and Mayor to execute all necessary documents to support the TCAC application.

Alternatives: None Recommended.

Fiscal Impact: Town staff has identified a source of potential funding for the balance (\$470,244) of the Town Loan (\$635,000) to NCRC, in certain revenues expected to be repaid to the former Agency's Low/Mod Fund as a result of Low/Mod Funds being borrowed for purposes of paying Supplemental Educational Revenue Augmentation Fund ("SERAF"). Given the current status of AB 1X 26 and its unknown potential impacts upon these funding sources, the availability of a source of funds for the balance of the Town Loan must be confirmed through the Successor Agency Oversight Board and the State Department of Finance prior to making any further disbursements of the Town Loan to NCRC. **Any subsequent disbursements would occur ONLY after successful tax credit award to NCRC by TCAC.**

Attachments: Resolution
Agreement

RESOLUTION NO. 12-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY CALIFORNIA APPROVING THE AFFORDABLE HOUSING FINANCING, DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA

WHEREAS, the Town of Yucca Valley has a public benefit obligation, and obligation under its General Plan, to provide affordable housing opportunities to low and moderate income residents, and

WHEREAS, National Community Renaissance of California (NCRC), a non-profit housing development corporation, develops and manages affordable housing for very-low, low- and moderate income residents and promotes neighborhood revitalization and stabilization throughout the region, and

WHEREAS, NCRC has entered into an Exclusive Negotiating Agreement related to the potential development of an affordable senior housing project to be located at the Town's vacant property located at the intersection of Dumosa and S.R. 62; and

WHEREAS, the Town and NCRC have been working since late 2010 on a proposal to develop 75-units of affordable senior housing and the Town has committed significant resources to make this project a reality, and

WHEREAS, Development of this affordable senior housing project assists the Town in meeting its housing requirement as mandated by state regulations and is consistent with the Town's adopted General Plan and Housing Element, and

WHEREAS, Development of this affordable senior housing project will improve access to senior services for our residents – co-locating the development adjacent to the Town Senior Center, library, museum, community center, and adjacent retail opportunities, and

WHEREAS, the County of San Bernardino recently awarded a HOME Program loan to the Yucca Valley Senior Project in the amount of \$1,622,830, and

WHEREAS, the scoring criteria related to the California Tax Credit Allocation Committee (TCAC) Application requires a demonstration of financial commitment by local sources, and

WHEREAS, the Town desires to assist NCRC in establishing a competitive application in response to the March 2012 TCAC application round,

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY RESOLVES AS FOLLOWS.

Section 1. The “AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT” attached hereto as Exhibit “A” (the “Agreement”) is approved by Council in form and substance.

Section 2. Council hereby grants to the Town Manager and Town Attorney authority to negotiate such further technical instruments (e.g., regulatory agreement, note and deed of trust) as needed to implement the terms of said Agreement; provided, however, that Town Council approval will be required for any document or revision that materially changes the costs or terms of the Agreement (e.g., provisional revisions entailing financial commitments exceeding \$25,000 shall require Council review and approval).

PASSED, APPROVED AND ADOPTED THIS 20th day of March 2012.

MAYOR

ATTEST:

TOWN CLERK

**AFFORDABLE HOUSING, FINANCING &
DISPOSITION & DEVELOPMENT AGREEMENT**

Escrow No. _____

Date of Opening of Escrow: _____, 2012

THIS AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT (this "**Agreement**") is made this ___ day of March, 2012, by and between THE TOWN OF YUCCA VALLEY, a California general law municipality ("**Town**"), and YUCCA VALLEY SENIOR HOUSING PARTNERS, L.P., a California limited partnership ("**Developer**").

RECITALS

A. *The Site.* This Agreement pertains to the conveyance to Developer of a certain 2.87 acre vacant property located in the Town of Yucca, County of San Bernardino, State of California, at the northwest corner of the intersection of Twentynine Palms Highway (State Highway 62) and Dumosa Avenue, and more particularly described in Exhibit "A" attached hereto (the "**Site**").

B. *Site Title & Impacts of AB 26.* The Site is owned by the Town as a result of Health & Safety Code § 34167.5. The Town's predecessor in interest to the Site was the Yucca Valley Parks & Recreation District, with the Site inuring to the Town upon the Town's incorporation in 1991. In March 2011, the Town took action to transfer title to the Site to the Yucca Valley Redevelopment Agency (the "**Agency**"). Shortly thereafter, Assembly Bill 1X26 ("**AB 26**") went into effect on June 29, 2011. Section 34167.5 of AB 26 may void *ab initio* and retroactively unauthorized the transfer of title to the Site to the Agency. Pursuant to this statute, the Town has the option of confirming (through the State Controller, Oversight Board or otherwise) whether title to the Site was ever effectively transferred to the Agency. Alternatively, the Town and Developer may pursue approval of the Project and transfer of Site title by the Oversight Board, subject to the review periods provided to the State Department of Finance under AB 26 for such approval, or confirmation that the Site qualifies as a "housing asset" title to which is transferred to the Town pursuant to Health & Safety Code § 34176(a). By these or any other lawful means, the Town and Developer shall resolve any outstanding ambiguities arising from AB 26 relating to the Site's condition of title prior to Close of Escrow hereunder.

C. *The Project.* Developer proposes to purchase the Site for purposes of developing the Site as a 75-unit affordable rental housing complex for senior citizens (the "**Project**"). Other than one (1) Manager's Unit, the Project will consist of rental units covenanted for occupancy by Senior-only households with a Low, Lower, Very Low, or Extremely Low Income for a period of not less than fifty-five (55) years. Developer shall be solely responsible for constructing Project buildings and developing the Site, which shall include approximately 87,482 square feet of building space for the rental units and interior common areas. The Scope of Development for the Project is more specifically described in Exhibit "B" attached hereto and incorporated herein by this reference. The Project shall consist of the following number of units restricted at each income level:

1. "**Extremely Low Income**" (no more than 30% of Area Median Income or "AMI")— 8 units;
2. "**Very Low Income**" (no more than 45% of AMI)—26 units;
3. "**Lower Income**" (no more than 50% of AMI) – 26 units;
4. "**Low Income**" (no more than 55% of AMI) – 14 units.

D. *Project Entitlements; CEQA.* A Specific Plan for the Project has been prepared pursuant to the provisions of the California Government Code, Title 7, Division 1, Chapter 3, Article 8, and Sections 65450 through 65457 (the "**Specific Plan**"). A Mitigated Negative Declaration has been prepared for the Yucca Valley Senior Affordable Housing Specific Plan and the Project and has been filed with the County Clerk's Office per the requirements of the California Environmental Quality Act ("CEQA") and its Guidelines.

E. *Sale of Site to Developer for Fair Market Value.* The fair market value of the Site was appraised at \$940,000.00 on March 9, 2011, which fair market value shall constitute Developer's "**Purchase Price**" for the entire Site. Developer shall purchase all Town's right, title and interests to the Site pursuant to a "**Note**" (Exhibit "C") in favor of the Town for the full Purchase Price, which note shall be payable from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available. The Promissory Note shall be secured by a "**Deed of Trust**" (Exhibit "D") recorded upon the Site, which Deed of Trust shall be released/reconveyed upon Developer's full and complete performance of this Agreement, the Note, and Regulatory Agreement.

F. *Town Loan to Developer.* Town agrees to loan \$635,000 to Developer for Developer's use towards Project construction, improvements and operation ("**Town Loan**"). About \$164,756.00 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**"). The Town has identified a source of funding for the Remainder Loan Proceeds payable to Developer in certain revenues expected to be repaid to the former Agency's Low/Mod Fund as a result of Low/Mod Funds being borrowed for purposes of paying Supplemental Educational Revenue Augmentation Fund ("SERAF"). Given the current status of AB 26, however, and its unknown potential impacts upon these funding sources, the availability of a source of funds for the Remainder Loan Proceeds must be confirmed prior to making any further disbursements of the Town Loan to Developer.

G. *Tax Credits & HOME Funds.* The Developer has been awarded an allocation of San Bernardino County "HOME" Funds in the amount of \$1,622,830.00 to be dedicated to Project construction. In addition to the Town Loan for Project funding, Developer shall submit up to four (4) consecutive applications to the California Tax Credit Allocation Commission to secure tax credit financing. This Agreement is effective for the duration of at least two application rounds in the year 2012 (March 2012 and July 2012) and two application rounds in 2013 (expected March 2013 and July 2013). Town shall provide reasonable cooperation to Developer in the course of these application rounds.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

(§100) DEFINITIONS

The following terms as used in this Agreement shall have the meanings given unless expressly provided to the contrary:

(§201) Affordable Rent.

The term “Affordable Rent” shall mean the monthly payments charged to and paid by tenants for the use and occupancy of a Residential Unit and facilities associated therewith, including a reasonable allowance for utilities, but shall not include any optional services provided by Developer to residents. Affordable Rent shall have the meaning prescribed for that term for each Project income level as follows:

- i. For Extremely Low Income households, the product of 1/12 of 30 percent times 30 percent of the AMI adjusted for family size appropriate for the unit (all age restricted units in the Project to be one-bedroom units).
- ii. For Very Low Income households, the product of 1/12 of 30 percent times 45% percent of the AMI adjusted for family size appropriate for the unit.
- iii. For Lower Income households, the product of 1/12 of 30 percent times 50% percent of the AMI adjusted for family size appropriate for the unit.
- iv. For Low Income households, the product of 1/12 of 30 percent times 55% percent of the AMI adjusted for family size appropriate for the unit.

(§202) Agreement.

The term “Agreement” shall mean this entire Agreement, including all exhibits, which attachments are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

(§203) AMI

The term “AMI” means "Area Median Income" and shall mean the area median income as published by the California Department of Housing and Community Development, as adjusted for household size, pursuant to Health and Safety Code Section 50093, or its successor.

(§204) Closing.

The term “Closing” or “Closing Date” shall mean the closing of the Escrow by the Escrow Agent distributing the funds and documents received through Escrow to the party entitled thereto as

provided herein, which Closing shall occur on or before the date established in Section 407, subsection 2.

(§205) Completion.

The term “Completion” means the date of issuance of the Certificate of Completion.

(§206) Days.

The term “Days” shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

(§207) Deed.

The term “Deed” or “Grant Deed” shall mean that Grant Deed in substantially the form attached hereto as Exhibit "E" by which Town as Grantor will convey fee title to the Site to Developer as Grantee.

(§208) Deed of Trust.

The term “Deed of Trust” shall mean that Deed of Trust and Assignment of Rents securing the Note as further described in Section 404(2), which shall be substantially in the form attached hereto as Exhibit "D".

(§209) Development Fees.

The term “Development Fees” shall mean those fees, charges, and exactions imposed by the Town or other governmental entities upon the development of the Project on the Site, including, but not limited to, application fees, building/grading/public infrastructure permit fees, processing fees, development impact fees, mitigation fees, park fees, storm drain fees, sewer fees, school fees, and other related charges.

(§210) Developer Fee.

The term “Developer Fee” means the fee paid to Developer or an affiliate of Developer and related to development services with respect to the development of the Project, in an amount equal to \$1,400,000, the payment of which shall be due at such times as are provided in the amended/restated partnership agreement for Developer as approved by Town, some or all of which Developer Fee may be deferred and, if deferred, payable to Developer as a priority from the Residual Cash Flow (see definition of Residual Cash Flow).

(§211) Effective Date.

The “Effective Date” of this Agreement shall be the date first written above, which shall be the date on which the Town approved this Agreement at a duly-noticed public meeting of the Town Council.

(§212) Enforced Delay.

The term “Enforced Delay” shall mean any delay described in Section 903 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 903.

(§213) Escrow.

The term “Escrow” shall mean the escrow established pursuant to this Agreement for the conveyance of title to the Site from Town to Developer.

(§214) Escrow Agent.

The term “Escrow Agent” shall mean Fidelity National Title, located at 1300 Dove Street, Suite 310, Newport Beach, California 92660 and empowered hereunder to act as the Escrow Agent for this transaction. The Escrow Agent contact shall be Valerie Rapp, (949) 477-3646.

(§215) Extremely Low Income Household.

The term “Extremely Low Income Household” shall mean a household earning no more than thirty percent (30%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§216) General Partner.

The term “General Partner” shall mean Developer’s General Partner, The Southern California Housing Development Corporation of the Inland Empire, a California non-profit public benefit corporation.

(§217) Gross Income.

The term “Gross Income” shall mean: (i) all rents and payments received by the Developer from tenants and occupants for the use and occupancy of the Site and the Project, (ii) laundry income, (iii) income from concessionaires and licensees, and (iv) rent subsidies, if any, received by the Developer, but “Gross Income” shall not include any security deposits (unless and until such deposits have been forfeited by the tenants and are payable to the Developer), insurance or condemnation proceeds, industry level operating reserves or deposits (not to exceed six (6) months of operating expenses plus debt expenses), interest on such reserve accounts (if added to funds on deposit in such accounts), capital contributions made to the Developer by the partners thereof, proceeds from the construction financing or the Town Loan or other financing provided to the Developer, including financing provided by any partner of Developer, or proceeds from the sale or refinancing of the Site and/or Project.

(§218) Guaranty.

The term “Guaranty” shall mean that document referenced in Section 404, subsection 2, hereof.

(§219) Holder.

The term “Holder” shall mean the holder, including its successors, grantees, or assigns of record of any mortgage, deed of trust, or other security interest affecting the Site.

(§220) LIHTC.

The term “LIHTC” or “tax credits” shall mean Low Income Housing Tax Credits administered and allocated by the California Tax Credit Allocation Committee.

(§221) Low Income Household.

The term “Low Income Household” shall mean a household earning no more than fifty-five percent (55%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§222) Lower Income Household.

The term “Lower Income Household” shall mean a household earning no more than fifty percent (50%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§223) Low/Mod Funds.

The term “Low/Mod Funds” shall mean and be limited to that portion of the former Agency’s general property tax increment, non-tax exempt bond proceeds, and interest allocations set aside pursuant to Health and Safety Code Section 33334.2 for the purposes of increasing, providing and preserving the community’s supply of low and moderate income housing available at an affordable housing cost to persons and families of low or moderate income.

(§224) Manager’s Unit

The term “Manager’s Unit” shall mean the one (1) Residential Unit within the Project that shall be designated by Developer as a residence for a “Qualified Manager.” The Manager’s Unit shall not be an income or age restricted Residential Unit.

(§225) Note; Note Amount.

The term “Note” shall mean the promissory note evidencing Developer's repayment obligation to Town as a residual receipts loan, subordinate to Senior Financing, in the amounts of the Purchase Price and the Town Loan, all as further described in Section 404, which shall be substantially in the form attached hereto as Exhibit "C". Developer’s repayment obligations to pay both the full amount of the Town Loan (\$635,000) plus the full Purchase Price (\$940,000) shall be secured as a single debt obligation owing by Developer to the Town, totaling One Million Five Hundred Seventy-Five Thousand Even Dollars (\$1,575,00.00) also referenced herein as the “**Note Amount**”.

(§226) Operating Expenses.

The Term "Operating Expenses" shall mean the aggregate of the following: (i) the cost of utilities supplied to and used for the Project and payable by the Developer; (ii) the cost of all insurance required for the Project in this Agreement, Developer's partnership agreement, the Senior Financing documents, or any ancillary documents concerning the operation of the Project; (iii) real property taxes, if any, and assessment payments; (iv) expenses and costs of social programs and compliance/monitoring reporting for the Project; (v) the deposits for the replacement reserves or operating reserves for the Project, in the amount provided by the Senior Financing or required by Developer's partnership agreement or any junior lender, if a greater requirement; (vi) on-site administrative costs (including payroll and payroll taxes and expenses, employee benefits); (vii) operating, maintenance and repair expenses and services, and necessary capital expenditures for the upkeep and repair of the Project and any expenditures required based upon a physical needs assessment by the Qualified Tax Credit Investor or Senior Financing lender (including materials and labor) including charges for public services such as sewer charges, license and permit fees, goods, commodities, materials, equipment, furniture, furnishings, installation of appliances, fixtures, painting, cleaning, pest control, gardening, rubbish removal, security services, advertising and promotion, leasing commissions, accounting, and legal expenses attributable to the Site or the Project which are directly attributable and customarily incurred in the operation of real estate projects similar to the Project, including property management fees, expenses and costs payable to the property manager; (viii) fees, costs or expenses of refinancing any loan; (ix) any post closing legal fees or other expenses, fees, costs incurred by the Developer in connection with obtaining this Agreement or the Town Loan to the extent not already included hereunder; (x) all scheduled, or otherwise due, payments of principal and/or interest on the Senior Financing, together with all financing fees and related charges payable by the Developer under the terms of the Senior Financing, including without limitation, issuer fees, trustee fees, remarketing fees, and rebate analyst fees, interest rate cap deposits and credit enhancer charges; (xi) all other fees and expenses which may be provided in Developer's annual budget prepared in accordance with the Senior Financing; and (xii) repayments of loans to a partner or affiliate of a partner of the Developer in accordance with the Partnership Agreement for operating deficits or similar operating shortfalls; and (xiii) repayments of any amounts owing to a partner or an affiliate of a partner of the Developer in accordance with the Partnership Agreement due to an adjustment in the tax credit equity caused by an adjustment to tax credits available to the Project. "Operating Expenses" shall not include the following: (a) repairs or replacements paid out of insurance proceeds received by the Developer; (b) book depreciation of buildings or other similar non-cash items of expense; (c) principal payments on all junior financing; (d) any deferred Developer Fee; and (e) any asset management or limited or general partner fees. To the extent that the Site or Project, or any part thereof, shall be leased by the Developer and the lessee or occupant pays any items described as Operating Expenses, then such items that are paid by such occupant shall not be Operating Expenses.

(§227) Project.

The term "Project" shall mean all of the improvements required to be constructed by Developer on the Site pursuant to this Agreement and the Specific Plan adopted for the Project (approximately 87,482 square feet of building space), including, but not limited to, the construction of buildings, glass and concrete work, landscaping, construction of parking areas,

and related improvements. The overall Project is more particularly described in the Scope of Development attached hereto as Exhibit "B". Other than one (1) Manager's Unit, the Project will consist of rental units covenanted for occupancy by Senior-only households with a Low, Lower, Very Low, or Extremely Low Income for a period of not less than fifty-five (55) years. The Project shall consist of the following number of units restricted at each income level:

1. Eight Extremely Low Income Units restricted to Senior Qualified Tenants;
2. Twenty-Six Very Low Income Units restricted to Senior Qualified Tenants;
3. Twenty-Six Lower Income Units restricted to Senior Qualified Tenants; and
4. Fourteen Low Income Units restricted to Senior Qualified Tenants.

The Residential Units will consist of 74 one-bedroom units of approximately six hundred and fifty (650) square feet (plus 100 square feet of balcony) and one two-bedroom Manager Unit.

(§228) Purchase Price.

The term "Purchase Price" shall mean the fair market value of the Site, which is based on an appraisal conducted in March 9, 2011, which shall be in the amount of Nine Hundred and Forty Thousand Dollars Even (\$940,000.00).

(§229) Qualified Manager.

The term "Qualified Manager" shall mean the resident manager of the Project who is selected and retained by Developer pursuant to the Regulatory Agreement. The Qualified Manager shall reside in the "Manager's Unit" within the Project as designated by Developer. The Manager's Unit shall be restricted to occupancy by the Qualified Manager and his/her household, and shall not be subject to an income or age restriction.

(§230) Qualified Tax Credit Investor.

The term "Qualified Tax Credit Investor" shall mean a person or entity, or affiliate of such person or entity who (i) is an experienced limited partner and investor in multifamily housing developments receiving low income housing tax credits allocated by the State of California or the United States federal government ("Tax Credits"), and (ii) has obtained or is contractually obligated to obtain a limited partnership or limited liability company membership interest in the Developer whereby it will receive ninety percent (90%) or more of the Tax Credits obtained in connection with the Project. Town shall have the right to reasonable prior approval, which shall not be unreasonably withheld, conditioned or delayed, of (i) the managing general partner, and (ii) the limited partner. Approved Qualified Tax Credit Investors shall include any entity which has Developer as a general partner, managing member or controlling shareholder.

(§231) Qualified Tenant.

The term "Qualified Tenant" shall mean those households seeking to rent a Restricted Unit who satisfy all of the following requirements:

1. Upon execution of a lease with Developer, each member of the household will occupy the Residential Unit (other than the Manager Unit) as its principal residence, and each member intends to thereafter continuously occupy such Residential Unit as its principal residence.
2. Upon execution of a lease with Developer, the household is a Low, Lower, Very Low, or Extremely Low, Income household.
3. The household has been selected in accordance with the tenant selection criteria set forth in the Regulatory Agreement.
4. At least one person in residence must be a Senior Citizen, and other residents in the same unit who are not Senior Citizens must be Qualified Permanent Residents, as defined in California Civil Code Section 51.3(b).

(§232) Regulatory Agreement.

The term “Regulatory Agreement” shall mean that Regulatory Agreement attached hereto as Exhibit "F", running with the land and providing for the proper maintenance of common facilities and improvements and the management and use of the Project, which also sets forth the limitations on occupancy, residency and use of the Residential Units.

(§233) Related Entity.

The term “Related Entity” means National Community Renaissance of California, a California public benefit corporation related to Developer’s General Partner.

(§234) Related Agreements.

The term “Related Agreements” means the Regulatory Agreement, the Note, the Deed of Trust and the Deed.

(§235) Release of Construction Covenants.

The term “Release of Construction Covenants” shall mean that document prepared in accordance with Section 513 of this Agreement, in the form attached as Exhibit "G", which shall evidence that the construction and development of the improvements required by this Agreement have been satisfactorily completed.

(§236) Residential Unit.

The term “Residential Units” shall mean and refer collectively to each and every Residential Unit located on the Site, including the Manager's Unit.

(§237) Residual Cash Flow.

The term “Residual Cash Flow” shall mean for any fiscal year the amount of Gross Income for such fiscal year less the Operating Expenses and less any partnership management fees for any

such fiscal year and less any deferred Developer's Fee. Partnership management/asset management fees shall exclude any payment of any item which is deducted separately as an Operating Expense and shall be limited as follows: (a) the limited partner fee shall be capped at \$5,000 per year for the 15 year TCAC compliance period (with CPI escalations up to 3% per year) and (b) any general partner fee shall be limited to \$10,000 per year (with CPI escalations up to 3% per year) during the 55 year affordability period).

(§238) Senior Citizen.

The terms "Senior" or "Senior Citizen" shall mean a person who is 55 years of age or older who intends to reside in the Residential Unit as his or her primary residence on a permanent basis and any other person residing in the unit is a "qualified permanent resident" or a "permitted health care resident" as provided in the Unruh Civil Rights Act, California Civil Code Section 51, *et seq.*, and all other applicable federal, state and local laws and regulations governing the use and occupancy of the Project.

(§239) Senior Financing; Construction & Permanent Loans.

Shall mean the non-Town loan(s) taken by Developer to fund the construction of the Project during the construction phase (the "**Construction Loans**") and the permanent loan(s) ("**Permanent Loans**") which shall replace the construction phase loans after the completion and stabilization of the Project, which the Town Loan (including the Deed of Trust and the Regulatory Agreement) shall be subordinate to, as evidenced by such subordination agreements as may be required by the lender(s) for the Senior Financing. Senior Financing shall also include such financing and instruments recorded upon the Site in conjunction with LIHTC and the San Bernardino County HOME Program. Senior Financing is more particularly described in Article 700 hereof.

(§240) Site.

The term "Site" shall mean the parcel of real property that is owned by the Town, which totals approximately 2.87 acres of real property and which shall be transferred to Developer pursuant to this Agreement upon which Developer shall construct the Project. The Site is legally described in Exhibit "A" hereto.

(§241) Title.

The term "Title" shall mean the fee title to the Site which shall be conveyed to Developer pursuant to the Deed.

(§242) Title Company.

The term "Title Company" shall mean Fidelity National Title, located at 1300 Dove Street, Suite 310, Newport Beach, CA 92660, and empowered hereunder to act as the Title Company for this transaction. The title officer shall be Patti Porter, (949) 221-4728.

(§243) Town.

The term "Town" shall mean the Town of Yucca Valley, a general law California Municipality.

(§244) TCAC.

The term "TCAC" shall mean the California Tax Credit Allocation Committee. To secure Project funding, Developer shall submit up to two (2) consecutive applications to the TCAC for LIHTC for the two application rounds in the year 2012 (March 2012 and July 2012). Town shall provide reasonable cooperation to Developer in the course of these 2012 TCAC application rounds.

(§245) Town Loan; Remainder Loan Proceeds.

The term "Town Loan" shall mean that loan in the amount of \$635,000 by Town to Developer for Developer's use towards Project construction, improvements and operation, which loan shall bear an interest rate of 0.5% per annum. About \$164,756.00 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to Developer after the Effective Date hereof and is referenced herein as the "**Remainder Loan Proceeds**".

(§246) Very Low Income Household.

The term "Very Low Income Household" shall mean a household earning no more than forty-five percent (45%) of the AMI for a household of the size of a Qualified Tenant household living in San Bernardino County.

(§300) PARTIES TO THE AGREEMENT

(§301) Town & Potential Assignment to Housing Authority.

1. **Authority of Town.** The Town is a California general law municipality with the general powers of disposing of real property essentially in any way it chooses, if the disposition is for the common benefit. (*See*, Cal. Const. Art. XI, §5; Govt. Code §37350.) On May 12, 2011, the Yucca Valley Planning Commission considered the proposed disposition of the Site for the Project and found that such disposition conforms with the general plan. (Govt. Code §65402(a).) The Site is not deemed by the Town to be surplus land pursuant to the California Surplus Lands Act, and even if such Site was deemed surplus land the proposed conveyance to Developer as a housing provider meets the priority disposition requirement of said Act. (Govt. Code §54222.) The Town in adopting this Agreement has found that the disposition of the Site is made in furtherance of the common benefit vis-à-vis providing 74 Residential Units for the benefit of the Town's Low, Lower, Very Low and Extremely Low Income Senior Citizens. (*See, Winkelman v. City of Tiburon* (1973) 32 Cal.App.3d 834.)

2. **Town Acting As Lender Only.** Town and Developer acknowledge and understand that the Town's participation in the Project is solely as a lender and that the Town is not participating in the Project as a developer or owner. Any actions by the Town which are not fully consistent with the Town's role as a lender are intended only to carry out routine government functions and impose constitutionally or statutorily authorized conditions acceptable

to the Developer. As such, the Project and the Town's participation through this Agreement are outside the scope of California Constitution Article XXXIV and its enabling legislation.

3. Possible Assignment to Housing Authority. Developer and Town acknowledge that the Town is in the process of establishing a Housing Authority to exercise the governmental functions and powers, organized and existing under the Housing Authority Law of the State of California (Health and Safety Code Section 34200, *et seq.*). It is proposed that all housing functions and assets, to the extent they may be retained by a governmental body of the Town pursuant to AB 26, may be assigned to the Town's Housing Authority once formed. If the Housing Authority is formed prior to Close of Escrow on the Site, title to the Site and all terms of this Agreement may be assigned to the Housing Authority without requiring further action of the Town or Developer, at which time the Housing Authority would undertake all Town's rights and obligations hereunder.

(§302) Developer.

1. Identification. Developer is Yucca Valley Senior Housing Partners, L.P., a California limited partnership. The General Partner of the Developer is The Southern California Housing Development Corporation of the Inland Empire, a California non-profit public benefit corporation, an entity that is related to the Related Entity. The Developer has been formed as a limited partnership in which a Qualified Tax Credit Investor will be allocated Tax Credits in consideration of a capital contribution that will be used by Developer to fund a portion of the cost of acquiring and developing the Site and operating the Project. The principal office of Developer for the purposes of this Agreement is located at 9065 Haven Ave., Suite 100, Rancho Cucamonga, CA 91730. Developer warrants and represents to Town that Developer will be qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out Developer's business as now and whenever conducted and to enter into and perform Developer's obligations under this Agreement.

2. Successors and Assigns. Except as may be expressly provided hereinbelow, all of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of Developer and the permitted successors, assigns and nominees of Developer as to each portion of the Site. Wherever the term "Developer" is used herein, such term shall include any permitted successors and assigns of Developer as herein provided.

3. Qualifications. The qualifications and identity of Developer are of particular concern to the Town, and it is because of such qualifications and identity that Town has entered into this Agreement with Developer. The Town has considered the experience, financial capability, and product being marketed by Developer, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a Project. Based upon these considerations, the Town has imposed those restrictions on transfer set forth in this Agreement.

(§303) Restrictions on Transfer.

1. Transfer Defined. As used in this section, the term "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this

Agreement, the Site, or the improvements thereon. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Developer in the aggregate, taking all Transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Transferor's immediate family. In the event Developer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Developer, or of beneficial interests of such trust. In the event that Developer is a limited or general partnership, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the limited or general partnership interest that is not excepted from the prohibitions hereof pursuant to subparagraph (3) below. In the event that Developer is a joint venture, such Transfer shall refer to the Transfer of more than twenty-five percent (25%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

2. Restrictions Prior to Completion. Any Transfer of the Developer's interest in the Site or the Project, in whole or in part, and any Transfer of the Developer's interest in all or any part of this Agreement or the Related Agreements, shall be subject to the approval of the Town, which shall be given or withheld within thirty (30) days of the Developer's written request therefor. The Town's approval shall not be unreasonably withheld or delayed, and the Town shall consent to any such Transfer by the Developer, without any adjustment to the financial terms and conditions of this Agreement or the Related Agreements, if prior to such Transfer, each of the following requirements is satisfied: (1) the Developer submits or causes to be submitted to the Town all information reasonably requested for the Town to make its determination required hereunder; (2) there is no event of default continuing under this Agreement or the Related Agreements; (3) the transferee satisfies the qualification standards with respect to creditworthiness, reputation and experience customarily applied by Fannie Mae or Freddie Mac, as applicable, to the approval of borrowers in connection with the transfer of similar loans on multifamily properties; (4) the transferee executes an assumption agreement that is acceptable to the Town and that, among other things, requires the transferee to perform all obligations of the Developer set forth in this Agreement and the Related Agreements; and (5) the Developer pays, or causes the proposed transferee to pay, the amount of the Town's out-of-pocket costs (including reasonable staff and attorneys' fees) incurred in reviewing the Transfer request.

In the absence of specific written agreement by Town, prior to the issuance of a Release of Construction Covenants, no Transfer by Developer of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring Town approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to Town an assumption agreement, in a form approved by the Town, assuming such obligations.

3. Exceptions. The foregoing prohibition shall not apply to any of the following:

A. Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 512, but Developer shall notify Town in advance of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Site.

B. Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (A) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

C. The granting of easements to any appropriate governmental agency or utility or permits to facilitate the development of the Site.

D. A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

E. A sale or Transfer of 49% or more of an ownership or controlling interest between members of the same immediate family, or Transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or Transfers to a corporation or partnership in which the immediate family members or shareholders of the Transferor have a controlling majority interest of 51% or more.

F. A sale or Transfer of an interest in Developer to a Qualified Tax Credit Investor.

G. The (i) sale, transfer, conveyance or pledge of limited partnership interests in the Developer, (ii) sale, transfer, conveyance or pledge of any partnership interest or membership interests in the limited partners of the Developer, or (iii) the appointment by the partners of the Developer of an additional or substitute co-general partner in accordance with the partnership agreement of the Developer; provided the Developer delivers prior written notice thereof to the Town that any additional or substitute general partner of the Developer is a single purpose entity to which the Town has given its written consent, which consent shall not be unreasonably withheld.

H. The transfer (i) of an interest in and/or of an existing partner to another existing partner, or (ii) of an interest in an existing general partner to an affiliate of any general partner, or (iii) of an interest in an existing general partner so long as such transfer, together with any prior transfer of an interest or interests in an existing general partner, do not result in more than forty-nine percent (49%) of the interest in an existing general partner having been transferred since the date hereof.

I. Transfers of an interest to a new partner which is an affiliate of an existing partner, including transfers of an additional general partner interest to an affiliate of the Tax Credit limited partner.

J. Transfers of an interest in a parent of a partner, provided, however, transfers of an interest in a parent of a partner performing the primary management functions on behalf of the Developer which results in Related Entity owning less than a controlling interest in such parent of such partner shall be subject to the written consent of the Town, which consent shall not be unreasonably withheld; or

K. The lease of Residential Units to Qualified Tenants or Qualified Manager.

L. Assignments for financing purposes as required in order to effect the Senior Financing.

M. Transfer of the Project or partnership interests in the Developer's limited partnership to a general partner of Developer at the end of the fifteen year Tax Credit initial compliance period.

N. Admission of the Qualified Tax Credit Investor to the Developer or the transfer of the Qualified Tax Credit Investor's interest in Developer to another party, or the redemption of the Qualified Tax Credit Investor's interest in the Developer provided that, prior to any such Transfer, the Qualified Tax Credit Investor has paid in full its capital contribution to Developer as and to the extent required in the Developer's partnership agreement.

O. Transfer of the interest of General Partner in the Developer to another entity controlled by Related Entity.

P. A conveyance resulting from eminent domain action or an acquisition under threat of an acquisition under threat of eminent domain.

4. Restrictions After Completion. It is hereby acknowledged by Developer and Town that a Town Loan is being provided for the Project. Therefore, subsequent to the issuance of the Certificate of Completion, except as otherwise permitted under the §303, subsection 3, Developer may not sell, Transfer, convey, hypothecate, assign or lease all or any portion of its interest in the Site without complying with any Transfer restrictions contained within the Related Agreements, as applicable.

(§400) DISPOSITION OF THE SITE

(§401) Financing Milestones.

The parties acknowledge that Developer intends to finance the acquisition, development, construction, and equipping costs for the Project with funds from a variety of sources, including those funding sources identified on the "**Project Budget**" attached to this Agreement as Exhibit "H". Developer shall diligently apply for and pursue each funding source identified in the Project Budget at the earliest feasible opportunity, taking into account rules, requirements and scoring criteria applicable to each funding source. Not counting the Town Loan to be provided pursuant to this Agreement, Developer shall demonstrate, to Town's reasonable satisfaction, that Developer has secured a bona fide award of LIHTC in an amount sufficient to provide for development of the Project in accordance with the Project Budget.

Developer shall submit up to four (4) consecutive applications to the TCAC for LIHTC for the two application rounds in the year 2012 (March 2012 and July 2012) and the two TCAC application rounds in the year 2013 (expected in March 2013 and July 2013). In the event that the Developer applies for and does not receive an allocation of LIHTC after these four allocation rounds, Developer and the Town shall meet and confer to determine whether Developer shall make another application if all parties agree that such application would be competitive under the then-applicable TCAC scoring criteria, provided that neither party shall have an obligation to continue this Agreement.

If the parties mutually agree that funding conditions suggest that an alternative financing structure would be more advantageous for the Project, the parties may agree to pursue that alternative financing structure and amend the Project Budget accordingly, although nothing herein shall require either party to pursue such alternative financing structure.

All funding sources for the Project shall be subject to Town's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(§402) Employment of Local Residents.

A goal of the Town with respect to this Project and other major projects within the Town is to secure employment opportunities for Yucca Valley residents. To that end, Developer covenants that Developer shall make best faith efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction of the Project, including minority owned business enterprises, to be listed with the Town of Yucca Valley Town Hall, 57090 Twentynine Palms Highway, Town of Yucca Valley, CA 92284, (760) 369-7207. Prior to the commencement of construction, and as soon as practicable, Developer and its prime contractor(s) shall contact the Town of Yucca Valley to schedule a Pre-Construction Orientation Meeting to discuss the encouragement to hire locally. In addition, Developer's contractor(s) shall: (i) establish a point of contact to provide information about available job opportunities, and (ii) conduct outreach efforts to attract local subcontractors and tradesmen. In addition, Developer shall include in each contract with any contractor and shall obligate the contractor to include in each subcontract with any subcontractor undertaking work on the Project, a provision obligating such contractor to make such efforts or to cause its subcontractors to make such efforts. Developer shall be deemed to have complied with its obligations set forth in this Section if its construction contract(s) with contractors contains language substantially as follows: "[Name of contractor] shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction/installation of [describe the applicable work of improvements], including minority owned business enterprises, to be listed with the Town of Yucca Valley. The Town is an express third party beneficiary of the foregoing obligations of [name of contractor] and shall have the authority to enforce the same (provided that no such exercise by the Town of its rights or remedies provided for herein impairs or jeopardizes the rights of [name of Developer]."

The provisions of this Section are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than the Town. In addition, and notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall Developer be deemed to be in Default of its obligations set forth in this Agreement if it performs its obligations set forth in this Section but a contractor of Developer commits a default under the applicable provisions of its construction contract.

(§403) Disposition of the Site.

Developer hereby agrees to purchase from Town, and Town agrees to sell to Developer all Town's rights, title and interests to the Site upon the terms and conditions hereinafter set forth. Developer agrees to develop the Site with seventy-four (74) income-restricted, Senior-only rental Residential Units as well as one (1) Residential Unit for a Qualified Manager as described in the Scope of Development and Project Budget. The Site shall be sold to Developer for the Purchase Price, which Purchase Price will be paid pursuant to a Note in favor of the Town for the full value of both the Purchase Price and the Town Loan, as more particularly described in Section 404, subsection 2.

(§404) Town Loan, Security & Covenants.

Subject to and conditioned upon Developer's satisfaction and continued compliance with the provisions of this Agreement, the Town agrees to provide Developer with a Town Loan for development of the Project as follows:

1. **Town Loan.** The total estimated cost of the Project is approximately \$18,872,387.00, as further described in the Project Budget. This estimated cost includes the Site acquisition costs and the hard and soft costs of constructing the Project. The Town agrees to provide the Town Loan to Developer in an amount equal to Six Hundred Thirty-Five Thousand, Dollars Even (\$635,000.00) to fund the actual costs for the development, construction and operation of the Project. About \$164,756.00 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$470,244.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**").

A. **AB 26 Confirmation.** The Town has identified a source of funding for the Remainder Loan Proceeds to be paid to Developer in certain revenues expected to be repaid to the former Low/Mod Fund as a result of Low/Mod Funds being borrowed for purposes of paying past SERAF obligations. It is currently unknown what potential impacts AB 26 may have upon these funding sources. Therefore, as further described in Section 404, subsection 3(G), the Remainder Loan Proceeds will be disbursed to Developer only after it has been confirmed that the Town has available funds to continue making disbursements to Developer.

B. **Town Loan Only for Project Costs.** The Town Loan shall only be utilized for the payment of Developer's costs as necessary to carry out the Project and as reflected in the Project Budget, and Developer shall certify such use to Town. Developer shall demonstrate that the Town Loan disbursement was properly used for these purposes upon reasonable written request of the Town. The Town Loan is based on the attached Project Budget which assumes a successful 9% tax credit application during the term of this Agreement.

C. **Refinancing.** Developer shall not be in default of the Note and need not seek approval of Town in refinancing any outstanding loan or note secured by the Site if all net proceeds from such refinance are applied against the unpaid balance of the Senior Financing and the Note and the debt service arising from such refinance does not reduce the Residual Cash Flow.

D. Disbursement of Remainder Loan Proceeds. If all conditions to disbursement of Remainder Loan Proceeds have been fulfilled, pursuant to Section 404, subsection 3, the Town shall disburse Remainder Loan Proceeds directly to Developer, or into Escrow for ultimate distribution to Developer, pursuant to (i) the Town's customary practices for disbursing such funds and (ii) verification that such proceeds will be used towards actual Project costs as reflected in the Project Budget. If Remainder Loan Proceeds are required for Project Costs prior to Close of Escrow, Developer shall first request in writing a draw-down on Remainder Loan Proceeds as necessary to pay Town-approved Project costs, provided that Developer has submitted all required documentation reasonably requested by the Agency to demonstrate that the Town Loan proceeds drawn shall be used for actual Project costs as reflected in the Project Budget.

E. Compliance with Law. Developer acknowledges that the Town Loan is subject to all terms and conditions of this Agreement, and any other local, state or federal agency with jurisdiction over the source of these funds and that the Project will be developed, constructed, and operated in accordance with the Town's standards and regulations and this Agreement. It is expressly understood and agreed by the parties that this section does not limit the amount of costs that may be charged or imposed by the Town for the Project or the Project approvals.

F. Affordability Covenant. In exchange for the Town Loan, which shall accrue a below-market interest rate, Developer shall, for a continuous fifty-five (55) year period from the date of issuance of a Certificate of Occupancy for the Project, operate and maintain the Project in compliance with the terms of this Agreement and the Regulatory Agreement, including, but not limited to, providing affordable housing within the Town. The Regulatory Agreement will be recorded concurrent with the Close of Escrow.

2. **Security for Assistance.** Developer's repayment obligations to pay both the full amount of the Town Loan (\$635,000) plus the full Purchase Price (\$940,000) shall be secured as a single debt obligation owing by Developer to the Town, totaling ONE MILLION FIVE HUNDRED SEVENTY-FIVE THOUSAND EVEN DOLLARS (\$1,575,00.00) (the "**Note Amount**").

Developer shall make and give to the Town the following types of security for the Note Amount:

A. Note. Developer's obligation to repay the Note Amount shall be evidenced by a Note having a form and content the same in all material respects to the Note attached hereto and incorporated herein as Exhibit "C". The Note shall provide:

(i) Residual Receipts Loan. That the Note shall be a residual receipts loan and shall be in the Note Amount. Repayment of the Note, including all principal and accrued interest, shall be made in annual payments equal to the Town's proportional share from fifty percent (50%) of Residual Cash Flow, to the extent Residual Cash Flow is available, commencing in the first year after issuance of the Certificate of Occupancy for the Project, and any unpaid amounts shall accrue simple interest at a rate of one-half of one percent (0.5%) per

annum. The unpaid balance of the Note, plus accrued interest, if not paid in full within the fifty-five (55) year term, is due and payable in full at the end of the fifty-five (55) year term.

(ii) That any Default of this Agreement or the Regulatory Agreement by Developer which remains uncured after the period provided for cure under the Agreement shall be a breach of the Note, in which event the entire outstanding principal balance of the Note, plus accrued interest, shall become due and payable by Developer on demand by the Town.

(iii) That the Note shall be secured by a Deed of Trust and Assignment of Rents having a form and content the same in all material respects to the Deed of Trust attached hereto and incorporated herein by reference as Exhibit "D" ("**Deed of Trust**").

(iv) The Note shall be nonrecourse to the Developer.

B. Deed of Trust. Developer's reimbursement obligation as set forth in this Agreement and the Note shall be secured by the Deed of Trust having a form and content the same in all material respects to the document attached hereto and incorporated herein by reference as Exhibit "D". The rights established in this Section and under the Deed of Trust are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity.

C. Guaranty. Developer, its General Partner, Related Entity and other affiliates with the Project, if any, shall also guaranty the completion of the development of the Project by executing a written Guaranty, which Guaranty will be submitted into Escrow by the Town, in the form utilized by the Town Attorney, prior to any Close of Escrow and as a condition of Closing.

3. Conditions Precedent to Disbursement of Town Loan. The Town Loan proceeds shall not be disbursed into Escrow for payment to Developer prior to the satisfaction of all the following conditions:

A. The Developer has submitted a financing plan for the Town's approval that identifies all sources of funds with a Developer Fee that does not exceed One Million Two Hundred Thousand Dollars (\$1,400,000.00).

B. The Developer provides the Town with a copy of the executed Guaranty.

C. The Developer has obtained commitments for all necessary construction and other funding required to construct and operate the Project.

D. The Developer has submitted to the Town the documentation of the insurance and performance bonds required under this Agreement and the Related Agreements.

E. Developer has executed and provided Town with the appropriately executed Note and Deed of Trust.

F. The Developer has executed and provided Town with the appropriately executed Regulatory Agreement for recordation on the Site.

G. The Town has secured satisfactory confirmation that a secure revenue source for funding the Remainder Loan Proceeds is, and will remain, available despite the implementation of AB 26. "Satisfactory confirmation" for the purposes of this requirement may include, without limitation: (a) the passing of all applicable statutes of limitations for potential legal challenges to the validity of the Town Loan, and/or (b) obtaining unchallenged, final written approval of the Town Loan from the Town's Oversight Board established pursuant to AB 26 in conjunction with approval from, or waiver of any challenge by, State government agencies with enforcement powers under AB 26, or (c) any other combination of State/local approvals and/or passage of periods for legal challenges as may be deemed by the Town to render the Town Loan secure from legal challenge, or (d) identification of an alternative, lawful funding source of Town funds for payment of the Remainder Loan Proceeds.

5. No Financial Assistance. Except as is expressly provided for in this Agreement, the Town shall have no obligation to provide Developer with additional financial assistance, to make any monetary or financial contributions toward the Project, to pay any development costs, to waive development fees or costs for necessary Town approvals, or to otherwise carry-out or complete the Project.

(§405) General Indemnity

Except as to the negligence, active negligence or willful misconduct of Town, Developer expressly agrees to and shall indemnify, defend, release, and hold Town, its officers, officials, agents, servants, employees, attorneys and contractors harmless from and against, any claim, liability, loss, damage, entry, cost, or expense (including, but not limited to, attorneys' fees, expert fees, and court costs) which arises out of or is in any way connected with Developer's performance under this Agreement and/or Developer's possession and use of the Site. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the employees, agents, servants, or subcontractors of Developer or its tenants or the tenants' invitees. The parties expressly agree that any payment, attorneys' fees, costs or expense that the Town incurs or makes to or on behalf of an injured employee under Town's self administered workers' compensation is included as a loss, expense or cost for the purpose of this provision. Town shall not be responsible for any acts, errors or omissions of any person or entity except Town and its respective officers, agents, servants, employees or contractors. The parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

Other than as authorized by the Guaranty, no deficiency judgment may be obtained against the Developer except for actual or constructive fraud, material intentional misrepresentation, intentional bad faith waste of or on the Project and such other matters as are referred to below. Consequently, no deficiency amount may be recovered from Developer under the provisions hereof, except as may be provided herein. Notwithstanding the generality of the foregoing,

however, Developer shall, except as to the negligence, active negligence or willful misconduct of Town, indemnify, defend, protect and hold the Town harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense, including, without limitation, reasonable attorneys fees and expenses incurred by the holder thereof, arising as a result of any (i) fraud or material misrepresentation by the Developer under or in connection with this Agreement or the Related Agreements; (ii) bad faith waste of the real property encumbered by the Deed of Trust; and (iii) losses resulting from the Developer's failure to maintain insurance as required under the provisions of the Deed of Trust. The Developer's obligation to indemnify the Town hereof as aforesaid shall be recourse obligations of the Developer, and in the event of any breach of such obligations, the Town shall have the right to proceed directly against the Developer to recover any and all losses, damages, liability, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) and may bring any action and institute any proceeding to obtain a deficiency judgment in or following foreclosure for any and all such losses, damages, liabilities, costs and expenses resulting from such breach.

(§406) Indemnification and Release from Liabilities Relating to New Legislation.

Developer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of legislation effective June 29, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, AB 26 and AB1x 27 became effective on June 29, 2011. AB 26 purports to eliminate redevelopment agencies while AB1x 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of \$1.7 billion this year and \$400 million annually in perpetuity. On December 29, 2011, the California Supreme Court in *Community Redevelopment Association v. Matosantos* (No. S194861) upheld the constitutionality of AB 26 and struck-down the constitutionality of ABx1 27, thus, absent further legislation, effecting the abolishment of redevelopment activities. Developer hereby acknowledges the possibility that AB 26 might be interpreted or applied in such a manner as to undermine or invalidate (i) Developer's rights to the Site, and/or (ii) Town's authority to convey the Site to Developer, and/or (iii) the validity of the Town Loan or Remainder Loan Proceeds to be paid to Developer, and/or (iv) the Town's legal authority to enter this Agreement, and/or (v) any other provision of this Agreement. Notwithstanding such risk, Developer hereby agrees to release, indemnify, defend (by Town's choice of counsel), and hold harmless Town, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any application or impact of AB 26 upon (i) Town's existing rights to the Site or Town Loan, (ii) this Agreement, (iii) Town's authority to convey the Site to Developer, (iv) Developer's authority to acquire the Site, or (v) any other costs or expenses whatsoever that may result to Developer as a result of AB 26. Notwithstanding the foregoing, Developer shall not be required to indemnify or defend Town for any liability Town may have incurred under AB 26 as a direct result of any actions taken by the Town prior to the Effective Date hereof.

(§407) Escrow.

1. **Opening Escrow.** Within twenty (20) days after Developer receives notice that it has secured a bona fide award of LIHTC, the Parties shall open an escrow

(“Escrow”) with the Escrow Agent identified above, (herein the “Escrow Agent”) by causing an executed copy of this Agreement to be deposited with Escrow Agent. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Agent (“Opening of Escrow”). Escrow Agent shall provide written notice of the Opening of Escrow date to Developer and Town. This Agreement shall constitute the joint escrow instructions of Town and Developer for the Site, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under these instructions. Town and Developer shall promptly prepare, execute, and deliver to the Escrow Agent such additional escrow instructions consistent with the terms herein as shall be reasonably necessary. No provision of any additional escrow instructions shall modify this document without specific written approval of the modifications by both Developer and Town.

2. Time for Closing Escrow. Escrow shall close no later than the business day following the fulfillment of all conditions and deposits to Escrow required under Section 408 hereto (“Closing Date”). Notwithstanding the foregoing, under no circumstances shall Escrow extend more than One Hundred Eighty (180) days following Opening, unless extended by mutual written agreement of the parties. The terms the “Close of Escrow” and/or the “Closing” are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of San Bernardino County, California. Possession of the Site, shall be delivered to Developer concurrently with the conveyance of title

(§408) Conditions to Close of Escrow for Acquisition.

1. Developer’s Conditions to Closing. Developer’s obligation to acquire the Site and to Close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Developer, be conditional and contingent upon the satisfaction, or waiver by Developer, of each and all of the following conditions (collectively, “Developer’s Conditions to Closing”) within the timeframes stated in Section 407, subsection 2, above:

A. Developer shall have approved the environmental condition of the Site as set forth in Section 411 and Developer shall have approved of title as set forth in Section 409 and the Title Company shall have unconditionally committed to issue the Developer’s title policy to Developer subject only to those title conditions approved by Developer as set forth in Section 411 and subject to the conditions and exceptions recited in the Deed, the Deed of Trust, and the Regulatory Agreement, which documents shall have been deposited into escrow in a recordable form.

B. Town shall have deposited into escrow a certificate (“FIRPTA Certificate”) in such form as may be required by the Internal Revenue service pursuant to Section 1445 of the Internal Revenue Code.

C. Developer shall have obtained evidence of financing commitments per Section 410 hereof for the development of the Site in an amount sufficient to develop the Project on the terms and conditions contemplated by the Developer and as set forth in the Project Budget to develop the Project.

D. Developer shall have obtained a reservation of LIHTC from the TCAC in an amount contemplated by the Developer to develop the Project.

E. Town shall have deposited into Escrow the executed Grant Deed.

F. Developer shall have obtained from the Town all required approvals, including site plan review, conditional use, subdivision, building, grading, landscaping, and others for the development of the Site as the Project, and Project shall be "permit ready" – i.e. building permits will issue immediately upon payment of necessary permit fees.

G. Town shall have disbursed the Town Loan into Escrow after satisfying all conditions for disbursement under Section 404, subsection 3.

H. No litigation shall be threatened or pending which seeks to prevent the construction or operation of the Project, or any part thereof, according to the terms set forth in this Agreement.

I. Town shall deposit into Escrow an estoppel certificate certifying that Developer has completed all acts, other than as specified, necessary for conveyance, if such be the fact.

J. At the Closing, the Town shall not be in material Default in any of its obligations set forth in this Agreement and all representations and warranties of Town contained herein shall be true and correct in all material respects, to the best of Town's knowledge.

Any waiver of the foregoing conditions must be express and in writing. In the event that the foregoing conditions have not been satisfied within the times provided therefor herein, either party may terminate this Agreement by delivering a written notice in accordance with Sections 413 and 808 hereof.

2. Town's Conditions to Closing. Town's obligation to sell the Site and to Close Escrow hereunder, shall, in addition to any other conditions set forth herein in favor of Town, be conditional and contingent upon the satisfaction, or waiver by Town, of each and all of the following conditions (collectively, "Town's Conditions to Closing") within the timeframes stated in Section 407, subsection 2, above:

A. Developer shall have obtained evidence of financing commitments pursuant to Section 410 for the acquisition and development of the Site and Town shall have approved such commitments.

B. Developer shall have obtained a reservation of LIHTC from the TCAC.

C. Developer shall have timely submitted to Town plans and drawings for all improvements to be constructed on the Site, including for site plan review, conditional use, building, grading, landscaping and other plans and drawings, as provided in

Section 502, and all necessary plans shall have been reviewed or revised as required by the Developer and Town, and final.

D. Developer shall not have made or attempted to make a Transfer in violation of Section 303, provided that Town shall give notice of any violation of Section 303 and afford Developer the opportunity to cure the violation.

E. Developer shall have deposited into escrow the Guaranty, Note, Deed of Trust, Notice of Affordability Restrictions, and Regulatory Agreement in an executed and recordable format where applicable.

F. At the Closing, Developer shall not be in material Default in any of its obligations set forth in this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects, to the best of Developer's knowledge.

G. The Town shall have secured satisfactory confirmation that (i) it holds fee title to the Site in such a manner that the Town may transfer title to the Developer without violation of, or incurring liability under, AB 26, and (ii) that the transfer of the Site to Developer will not otherwise be adjudicated as void or unenforceable, or subject to unwinding, pursuant to the provisions of AB 26. "Satisfactory confirmation" for the purposes of this Section includes, without limitation: (a) the passing of all applicable statutes of limitations for potential legal challenges to the validity of the proposed sale of the Site to Developer, or (b) obtaining unchallenged, final written approval of the Site's sale from the Town's Oversight Board established pursuant to AB 26 in conjunction with approval from, or waiver of any challenge by, State government agencies with enforcement powers under AB 26, or (c) any combination of State/local approvals and passage of periods for legal challenges as may be deemed by the Town to render the Site's disposition secure from legal challenge, *and* (d) one of the foregoing shall place the Title Company in a position to issue a final ALTA policy of title insurance insuring the transfer of the Site's title to Developer. The parties hereby acknowledge that the intent of this condition is to ensure the legality of the Site's disposition proposed hereunder and to protect the Town's General Fund monies from any liability that may relate to, or arise from, the Site's conveyance should it be found a violation of AB 26.

Any waiver of the foregoing conditions must be express and in writing. In the event that Developer fails to satisfy Town's foregoing conditions or defaults in the performance of its obligations hereunder, Town may terminate this Escrow.

3. Both Parties' Conditions to Closing. Prior to the Closing Date, Developer and Town shall execute and deliver a certificate ("Taxpayer ID Certificate") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenue Code, or the regulations issued pursuant thereto, certifying as to the description of the Site, Date of Closing, gross price, and taxpayer identification number for Developer and Town. Prior to the Closing, Developer and Town shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

(§409) Title Matters.

1. Condition of Title. Town shall convey to Developer fee interest in the entire Site, subject only to: (i) this Agreement, conditions in the Grant Deed, the Deed of Trust, the Guaranty, the Notice of Affordability Restrictions and the Regulatory Agreement; (ii) current taxes, a lien not yet payable; (iii) quasi-public utility, public alley and public street easements of record approved by Developer, which approval shall not be unreasonably withheld; and (iv) covenants, conditions and restrictions, reciprocal easements, and other encumbrances and title exceptions approved by Developer under this Section 409.

2. Town Not to Encumber Site. Town hereby warrants to Developer that it has not and will not, from the Effective Date of this Agreement through Close of Escrow, transfer, sell, hypothecate, pledge, or otherwise encumber the Site without express written permission of Developer or as otherwise specified in this Agreement (i.e., authority of Town to transfer the Site to a Housing Authority).

3. Approval of Title Exceptions. No later than 140 days following the Effective Date hereof, Town shall deliver to Developer an ALTA survey of the Site and a preliminary title report or reports (collectively, the "Title Report") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Title Report. The Developer shall have the right to reasonably approve or disapprove the Exceptions. The Developer shall have sixty (60) days from the date of its receipt of the Title Report to give written Notice to the Town and Escrow Agent of the Developer's approval or disapproval of any of such Exceptions set forth in the Title Report, within its reasonable discretion. Developer's failure to provide Notice of its approval of the Title Report within such time limit shall be deemed disapproval of the Title Report. If the Developer delivers Notice to the Town of its disapproval of any Exceptions in the Title Report, the Town shall have the right, but not the obligation, to give its written notice to Developer and to Escrow Agent within 30 days that it will, no later than the date of Closing, remove any disapproved Exceptions or to deliver Notice to the Developer providing assurances satisfactory to the Developer within said time period that such Exception(s) will be removed on or before the Closing. If the Town cannot or does not elect to remove any of the disapproved Exceptions within that period, Town shall provide Notice of such fact to Developer and Developer shall have thirty (30) days after receiving such Notice to either give the Town written Notice that the Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the Town written Notice that the Developer elects to terminate this Agreement and the Developer's failure to give timely written Notice shall be deemed as an election to terminate this Agreement. Fee simple title subject only to the Exceptions to title approved by the Developer as provided herein shall hereinafter be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any further Exceptions reported by the Title Company after the Developer has approved the Condition of Title for the Site (which are not created by the Developer). The Town shall not voluntarily create any new exceptions to title following the Date of Agreement.

4. Title Policy. At the Close of Escrow, Escrow Agent shall furnish Developer with an ALTA Policy of Title Insurance ("Title Policy") for the Developer's interest, wherein the Title Company shall insure that title to the Site shall be vested in Developer, containing no Exception to such title which has not been approved or waived by Developer in

accordance with this Section. The Title Policy shall include any available additional title insurance, extended coverage or endorsements that Developer has reasonably requested. The Town shall pay only for that portion of the title insurance premium attributable to the standard coverage. Developer shall pay for the premium for any additional title insurance, extended coverage or special endorsements.

(§410) Evidence of Financial Capability.

No later than ninety (90) following Developer obtaining a reservation of LIHTC, Developer shall submit to Town Manager for approval evidence reasonably satisfactory to the Town Manager that Developer has the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial capability shall include all of the following:

1. Updated cost estimates for Developer's total cost of developing the Project (including both "hard" and "soft" costs).
2. An update of the Construction Loan solicitations obtained by Developer to finance the development of the Project, or such other documentation reasonably satisfactory to the Town Manager sufficient to demonstrate that Developer has adequate funds available and committed to finance the development of the Project.
3. An executed letter of intent with a Qualified Tax Credit Investor that demonstrates that Developer has adequate funds available and/or committed to cover the difference between the total development costs of the Project (subparagraph (1) above) and the proceeds of the Construction Loan commitment (subparagraph (2) above) and the Town Loan.
4. A copy the draft contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof.

Developer covenants and agrees to take all action, furnish all information, give all consents and pay all sums reasonably required to keep the Construction Loan commitment in full force and effect and shall comply in all material aspects with all conditions thereof, and shall promptly execute, acknowledge and deliver all applications, credit applications and data, financial statements, and documents in connection therewith.

(§411) Condition of Site.

1. **Disclaimer of Warranties.** Upon the Close of Escrow, Developer shall acquire the Site in its "AS-IS" condition and shall be responsible for any defects in the Site, whether patent or latent, including, without limitation, the physical, and geotechnical condition of the Site. Town makes no representation or warranty concerning the physical, geotechnical or other condition of the Site, the suitability of the Site for the Project, or the present use of the Site, and specifically disclaims all representations or warranties of any nature concerning the Site made by Town or its employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, present and future zoning, soil, subsoil, the purpose for which the Site is suited, or drainage. Moreover, Town makes no

representation or warranty concerning the compaction of soil upon the Site, nor of the suitability of the soil for construction. Developer assumes all liabilities that arise from post-Closing events.

2. Right to Enter Site, Indemnification. Developer shall have the right to enter upon the Site to conduct soils, engineering, or other tests and studies, to perform preliminary work or Site investigation or for any other purposes to carry out the terms of this Agreement. The Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Environmental Consultant") and other consultants to make such investigations of the Site as the Developer deems necessary, including any soils, geotechnical and other testing of the Site. Developer shall indemnify, defend and hold Town harmless from and against any claims, injuries or damages arising out of or involving any such entry or activity as provided in Section 505. Any such activity shall be undertaken only after securing any necessary permits from the appropriate governmental agencies and providing Town with certificates of insurance evidencing the coverages required in Section 505. The Developer shall reasonably approve or disapprove of the physical and environmental condition of the Site as described in Section 412.4 below.

3. Hazardous Materials. Developer understands and agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Developer may look to current or prior owners of the Site, but under no circumstances shall Developer look to Town for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, except if such loss or liability is the result of Town's failure to disclose the existence of any known Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Developer, and each of the entities constituting Developer, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges Town, and its directors, officers, employees, and agents, and its respective heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of Town, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Developer, its successors, assigns or any affiliated entity of Developer, against the Town, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:**

“A general release does not extend to claims which the creditor does not know or suspect to exist in his/ her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.”

DEVELOPER’S INITIALS: _____ TOWN’S INITIALS: _____

Developer and each of the entities constituting Developer, shall, from and after the Closing, defend, indemnify and hold harmless Town and its officers, directors, employees, agents and representatives (collectively, the “**Indemnified Parties**”) from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Site, unless resulting from the Indemnified Parties’ negligence or willful misconduct, but only to the extent first arising or occurring after the Closing or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Site occurring after the Closing, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys’ fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Site or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, Developer shall use its diligent efforts to obtain for Town the same releases, indemnities and other comparable provisions.

For purposes of this Section, the following terms shall have the following meanings:

a. “Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

b. “Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. “Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Site to comply with all applicable Environmental

Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Site is capable of such compliance.

d. "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this Agreement, Developer's release and indemnification as set forth in the provisions of this Section, as well as all provisions of this Section, shall survive the termination of this Agreement and shall continue in perpetuity.

4. Due Diligence. Starting from the Effective Date hereof and ending ninety (90) days following the Opening of Escrow ("Due Diligence Period"), Developer may inspect the Site in order to determine whether to approve the physical condition of the Site as described in Section 412, subsection 2, above. Town shall cooperate and provide such information in Town's possession reasonably necessary for Developer to conduct its due diligence review during the Due Diligence Period. The Developer's failure to deliver written Notice of its approval within such time limit shall be deemed disapproval of the physical and environmental condition of the Site. In the event Developer does not approve of the condition of the Site by written notice to Town prior to the expiration of the Due Diligence Period, this Agreement shall terminate, and, except as otherwise expressly stated in this Agreement, neither party shall have any further rights or obligations to the other party.

(§412) Matters Pertaining to Escrow.

1. Escrow Costs. On the Date of Closing, the Escrow Agent shall advise the Town and the Developer in writing of the fees, charges, and costs necessary to clear title and close escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing. On or before, but not later than 1:00 p.m. of the business day prior to the Date of Closing, Town shall deposit into Escrow payment to Escrow Agent of Town's share of costs as determined by the Escrow Agent and any balance of Remainder Loan Proceeds that have not already been paid to Developer. On or before, but not later than 1:00 p.m. of the Date of Closing, Developer shall execute and acknowledge as may be required and deposit into Escrow such payment to Escrow Agent of Developer's share of costs as determined by the Escrow Agent.

2. Recordation and Disbursement of Funds. Upon the completion by the Town and Developer of the deliveries and actions specified in these Escrow instructions precedent to Closing, the Escrow Agent shall be authorized to buy, affix and cancel any documentary stamps and pay any transfer tax and recording fees, if required by law, and thereafter cause to be recorded in the appropriate records of San Bernardino County, California, the Grant Deed, the Regulatory Agreement, the Notice of Affordability Restrictions, the Deed of Trust and any other appropriate instruments delivered through this Escrow, if necessary or proper to, and provided that the fee title interest can, vest in Developer in accordance with the terms and provisions herein. Concurrent with recordation, Escrow Agent shall deliver the Title Policy to Developer insuring title and conforming to the requirements of Section 409, subsection 4. Following recordation, the Escrow Agent shall deliver copies of said instruments to Developer and Town.

3. Allocation of Costs. The Escrow Agent is authorized to allocate costs as follows: Town shall pay the cost of the Title Policy as provided above while Developer shall pay premiums for any additional insurance, extended coverage or special endorsements. Developer shall pay the documentary transfer tax as well as all recording fees. Developer and Town shall each pay one-half of all Escrow and similar fees, except that if one party defaults under this Agreement, the defaulting party shall pay all Escrow fees and charges. Each party shall pay its own attorneys' fees.

4. Proration and Adjustments. Ad valorem taxes and assessments on the Site for the current year shall be prorated by the Escrow Agent as of the date of Closing with the Town responsible for those levied, assessed or imposed prior to Closing and the Developer responsible for those after Closing. If the actual taxes are not known at the date of Closing, the proration shall be based upon the most current tax figures. When the actual taxes for the year of Closing become known, Developer and Town shall, within thirty days thereafter, reprorate the taxes in cash between the parties. Insurance will not be assigned through Escrow; rather, Town will cancel any existing insurance policy and Developer will provide new insurance.

5. Extraordinary Services of Escrow Agent. It is understood that Escrow fees and charges contemplated by this Agreement incorporate only the ordinary services of the Escrow Agent as listed in these instructions. In the event that the Escrow Agent renders any service not provided for in this Agreement or that there is any assignment of any interest in the subject matter of this Escrow or that any controversy arises hereunder, or that the Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

6. Escrow Agent's Right to Retain Documents. Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses shall be paid. The undersigned hereby jointly and severally promise to pay such sums upon demand.

7. Responsibilities in the Event of Controversies. If any controversy documented in writing arises between Developer and Town or with any third party with respect to the subject matter of this Escrow or its terms or conditions, the Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the Site prior to settlement of the controversy by a final decision of a court of competent jurisdiction or written agreement of the parties to the controversy. The Escrow Agent shall be responsible for timely notifying Developer and Town of the controversy. In the event of such a controversy, the Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close escrow or take any other action unless such controversy has been caused by the failure of the Escrow Agent to perform its responsibilities hereunder.

8. Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Agent. The name and address of Escrow Agent is set forth on the first page of this Agreement. It is agreed that Escrow Agent is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Agent hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Town and Developer respectively in Section 901 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Agent agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Developer and Town agree (i) to

cooperate with Escrow Agent and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Developer and Town, their respective employees and attorneys, and Escrow Agent and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Developer nor Town shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

(§413) Termination of Escrow.

1. Termination. If Escrow fails to timely close as provided above, Escrow shall terminate automatically without further action by Escrow Agent or any party, and Escrow Agent is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Agent; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked “void and of no force or effect” by Escrow Agent before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Developer or Town may have against each other arising from the Escrow or this Agreement.

2. Termination Resulting from Implementation of AB 26. If it is determined that the terms of this Agreement, either in whole or in part, would (i) constitute a violation of AB 26, or (ii) that AB 26 renders provisions of this Agreement null and void, or (iii) that AB 26 potentially exposes one or both parties hereto to a bona fide risk of liability should the terms of this Agreement be performed, either party may terminate Escrow. In lieu of terminating Escrow, the parties may elect, based on mutual agreement, to negotiate revisions to this Agreement or to the Project if reasonable modifications to this Agreement or the Project would abrogate potential violations of, or liability under, AB 26.

(§500) DEVELOPMENT OF THE SITE.

(§501) Scope of Development.

The Site shall be developed by Developer as provided in the Scope of Development, the Regulatory Agreement, the Specific Plan, and the plans and permits approved by Town and City pursuant to Section 502.

(§502) Development Plans, Final Building Plans and Environmental Review.

1. Approved Specific Plan; CEQA Compliance; Proposed Development’s Consistency With Plan and Codes. A Specific Plan for the Project has been prepared pursuant to the provisions of the California Government Code, Title 7, Division 1,

Chapter 3, Article 8, and Sections 65450 through 65457. Town warrants and represents that the City's General Plan and Zoning Ordinance permit Developer's proposed development, and construction, operation, and use of the Site as provided in this Agreement including, without limitation, the Scope of Development and approved Specific Plan, subject only to those development approvals yet to be obtained, including Site Plan Review and subdivision approval (if required). It is expressly understood by the parties hereto that Town makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from Town, Town reserving full police power authority over the Project. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items, nor a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan. Concurrently with the approval of this Agreement, the Town has approved the Developer's Basic Concept Drawings and the Specific Plan. No later than ninety (90) days after the Effective Date hereof, Developer shall submit to the Town any further preliminary (if needed), and thereafter final, drawings and specifications for development of the Site in accordance with the Scope of Development, and all in accordance with the Town's regulatory requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, signage, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by mutual consent of Town and Developer. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved. Plans in sufficient detail to obtain all discretionary land use approvals, including for site plan approval, conditional use permit, and other actions requiring Planning Commission approval, shall be submitted and processed concurrently for the Site.

3. Developer Best Efforts to Obtain Approvals. Developer shall exercise its best efforts to timely submit all documents and information necessary to obtain all development and building approvals from the Town in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Developer shall comply with all applicable development standards in Town's Municipal Code and Development Code, and shall comply with all building code, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Town Cooperation. Subject to Developer's compliance with (i) the applicable Town development standards for the Site, and (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, Town agrees to provide reasonable assistance to Developer, at no cost to Town, in the processing of Developer's submittals required under this Section. Town's failure to provide necessary approvals or permits within such time periods, after and despite Developer's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. **Disapproval.** The Town shall approve or disapprove any submittal made by Developer pursuant to this Section within thirty (30) days after such submittal. All submittals made by Developer will note the 30-day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in reasonable detail in writing the reason for the disapproval, and the changes which the Town reasonably requests be made. Developer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than fifteen (15) days after the date of disapproval. Thereafter, Town shall have an additional thirty (30) days for review of the resubmittal, but if the Town disapproves the resubmittal, then the cycle shall repeat, until the Town's approval has been obtained. The foregoing time periods may be amended by mutual written agreement of the parties.

6. **Development Fees.** Notwithstanding any assistance to be provided by the Town under this Agreement, Developer shall be solely responsible for payment of all Development Fees.

7. **CEQA.** A Mitigated Negative Declaration has been approved for the Specific Plan and the Project and was filed with the County Clerk's Office per the requirements of CEQA and its Guidelines. Without limitation of the foregoing, Developer specifically acknowledges and agrees that the Developer shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements, including all mitigation measures and requirements of the Mitigated Negative Declaration. The Developer agrees to supply information and otherwise assist Town, upon Town's request, to determine the environmental impact of the proposed development and to allow Town to prepare and process such environmental documents, if any, as may need to be completed for the development pursuant to the requirements of CEQA.

8. **Dedication of Rights-of-Way for Public Improvements.** Developer shall give and dedicate such rights-of-way, easements, agreements, licenses, and other grants of rights ("Dedications") to the Town as are reasonably required to accomplish the survey, design, construction, inspection, testing, operation, maintenance, and repair of public improvements. It is understood and agreed by Developer that such Dedications may include, but are not limited to, fee parcels, and permanent or temporary rights-of-way or easements for public purposes (including street and utility use, traffic intersection improvements, slope, drainage, maintenance, construction, entry and/or access, and encroachment permits). Developer agrees that the making of such Dedications are part of the consideration provided by Developer for this Agreement, that Developer shall not seek, nor have a right to seek, any compensation from the Town for such Dedications, and that Developer shall not pursue any legal action for compensation, including inverse condemnation or eminent domain, with regard to such Dedications.

9. **No Exemption from Taxes.** This Agreement shall not exempt, and shall not be interpreted as exempting, Developer, Holder, or any person claiming through either of them, from the payment of, or from being subject to the levy of: (i) ad valorem property taxes imposed on the Site under Article XIII A of the California Constitution; (ii) special taxes imposed on the Site; (iii) special assessments imposed on the Site; (iii) any taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code §7200, et seq.; or (iv) any other taxes, assessments, fees, exactions, or charges any portion of

which are allocated to, or received by, the Town and which are imposed due to the ownership, use, or possession of the Site or interest therein or due to the construction or operation of the Project. This Agreement shall not exempt, and shall not be interpreted as exempting, Developer, Holder, or any person claiming through either of them, from inclusion in any maintenance district, assessment district, community facilities district, other special district, or other method of public financing as may be allowed under the laws of the State of California or of the United States. The Town acknowledges that Developer intends to obtain a Property Tax Exemption pursuant to Revenue and Taxation Code § 214(g). Nothing in this Agreement shall prohibit the Developer from obtaining a Property Tax Exemption and until such time as such exemption has been obtained, Developer shall pay all Property Taxes levied on the Site.

10. Ownership of Plans. All development plans, construction drawings, construction plans, architect's plans and other plans and drawings relating to the development of the Project shall be and remain the sole property of Developer, unless otherwise specified herein.

(§503) Developer Responsibilities During Project Construction.

The Developer shall be solely responsible for all actions necessary for the development of the Project and cause all construction of the Project to be performed in accordance with this Agreement, the Scope of Development and the Project Budget, as modified from time to time, as well as in accordance with all other applicable provisions of this Agreement and the Related Agreements and all applicable laws and regulations. The cost of constructing all of the improvements required to be constructed for the Project shall be borne by Developer.

Because the Town Loan to Developer qualifies as public funding in the form of a below-market interest rate loan for a project with occupancy of at least 40 percent low-income housing units for the 55-year term of the Regulatory Agreement, the parties do not believe that the Project would be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("**Prevailing Wage Law**"). Further, the parties hereto believe that the Site is being conveyed to the Developer at fair market value and that no financial assistance or public monies are being provided to Developer with respect to the Project such that the Project is not subject to the Prevailing Wage Law. Notwithstanding the foregoing, Developer fully accepts the risk that construction or development of the Site may qualify as a "public work" "paid for in whole or in part out of public funds," such that it would cause Developer to be required to pay prevailing wages for any aspect of the development. Developer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Developer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Developer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Developer shall indemnify, defend, and hold Town harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The Town makes no representation that any construction completed by Developer is or is not subject to Prevailing Wage Law.

In addition, in developing the Site, Developer shall water the ground as reasonably required by Town, and take such other actions as Town shall reasonably require to minimize the impact of construction and airborne debris on nearby property.

(§504) Continual Performance; Progress Reports.

Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay. Developer shall keep the Town informed of the progress of construction and shall submit monthly written reports of the progress of the construction to the Town in the form required by the Town.

(§505) Indemnification During Construction.

During the periods of construction on the Site and until such time as the Town has issued a Release of Construction Covenants with respect to the construction of the improvements thereon, the Developer agrees to and shall indemnify and hold the Town harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Site and which shall be directly or indirectly caused by any acts done thereon by, or any errors or omissions of, the Developer or its agents, servants, employees, or contractors. The Developer shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Town, or its agents, servants, employees, or contractors. The Town shall not be responsible for any acts, errors, or omissions of any person or entity except the Town and its agents, servants, employees, or contractors, subject to any and all statutory and other immunities. The provisions of this Section shall survive the termination or expiration of this Agreement.

(§506) Insurance.

Except as provided in this Section, prior to the entry by Developer on the Site pursuant to Section 411, subsection 4, and prior to the commencement of any construction by Developer on the Project, Developer shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Town, during the entire term of such entry or construction (unless otherwise required for a longer period hereunder), the following policies of insurance:

1. Developer's Casualty Insurance. Developer shall, at its sole expense, obtain and/or cause to be maintained by any tenant on the Site, and shall keep in force on all buildings and improvements constructed as part of the Project until the expiration of this Agreement, and all time frames required hereunder, including all time frames contained within the Regulatory Agreement, a policy of standard "all risk" fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of full replacement value against "all risks of physical loss" including without limitation a guaranteed replacement cost and code compliance coverage endorsement (excluding earthquake coverage, boiler and machinery insurance coverage, heating, air conditioning equipment, and other equipment of such nature), and insurance against loss or damage to personal property located on the Site by fire and other hazards covered by such insurance

(without any deductible clause unless approved in writing by the Town). In the event any tenant on the Site fails to maintain coverage to the extent of one hundred percent (100%) of full replacement value for the Site, then Developer shall maintain such additional or gap insurance to satisfy the requirements of this Section. All such insurance shall be payable to Town. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. Such policy shall, if required by the Town, contain an agreed value clause sufficient (as determined by Town) to eliminate any risk of Town's coinsurance.

2. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Developer and the Town against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Developer in the course of carrying out the work or services contemplated in this Agreement.

3. Automobile Insurance. A policy of automobile liability insurance written on a per occurrence basis in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage covering owned, leased, hired, and non-owned vehicles.

4. Builder's Risk Insurance. A policy of "Builder's Risk" insurance covering the full replacement value of all of the improvements to be constructed by Developer pursuant to this Agreement plus Developer's personal property and equipment. Developer shall procure the builder's risk insurance policy prior to commencing construction.

All of the above policies of insurance, except the Builder's Risk Insurance, shall be primary insurance and shall name the Town and its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against Town and its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to Town. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Town Manager. No work or services under this Agreement shall commence until the Developer has provided Town with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by Town.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances.

Developer shall provide in all contracts with contractors, subcontractors, architects, and engineers that said contractor, subcontractor, architect, or engineer shall maintain the same

policies of insurance required to be maintained by Developer pursuant to this Section, unless waived or modified by the Risk Manager.

The Developer agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which the Developer may be held responsible for the payment of damages to any persons or property resulting from the Developer's activities or the activities of any person or persons for which the Developer is otherwise responsible.

5. Developer's Liability Insurance. Developer shall, at its sole expense, obtain and keep in force until the expiration of the Regulatory Agreement, a policy of commercial general liability insurance in an occurrence form providing for broad form property damage coverage, broad form contractual coverage, personal injury, bodily injury, and advertising injury coverage with employee exclusion as to each named insured deleted, and products and complete operations coverage, insuring Developer, and naming Town, its officials, employees and agents, as additional named insureds, against any liability arising out of or in connection with Developer's possession of the Site and the use of the Site and all improvements thereon by any person, Town's activities in connection with the Project, or any other claim arising out of or relating to the Project or work on the Site, or the maintenance of the Project after completion of construction. Such insurance policies shall have (a) a combined single limit for both bodily injury or death in an amount not less than Three Million Dollars (\$3,000,000.00) and (b) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than Two Million Dollars (\$2,000,000.00), which amounts shall be increased from time to time as reasonably required by the Town. (Umbrella policies may be used to satisfy Developer's coverage obligations.) Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. The insurance to be provided by Developer may provide for a deductible or self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000), with such maximum amount to increase at the same rate as the periodic increases in the minimum amount of total insurance coverage set forth above. The policy shall insure performance by Developer of indemnity provisions of Section 405 of this Agreement. The limits of said insurance shall not limit the liability of Developer hereunder.

Insurance Policies. All of Developer's insurance shall be primary insurance written in a form satisfactory to Town by companies licensed in California, or otherwise acceptable to and approved by Town (which must be Class IX A- or better as rated by Best's Insurance Reports) and shall specifically provide that such policies shall not be subject to cancellation or other change except after at least thirty (30) days prior written notice of Town. Copies of the policies, together with satisfactory evidence of payment of premiums shall be deposited with Town on or prior to the date hereof, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

Other Insurance Provisions. Said policy or policies, as applicable, shall combine aggregate limits for Bodily Injury, Property Damages, Personal Injury, and Advertising Injury, in the amounts specified above, that apply specifically to and can only be exhausted in connection with claims arising out of or relating to the Property. If any claim, event, or loss occurs during the policy period which will or may decrease the aggregate amount of insurance

coverage available under the policy, Developer shall immediately secure additional coverage sufficient to provide total aggregate limits at least equal to the amounts set forth above on a going forward basis. Should any part of the coverage required above be provided by “excess” or “umbrella” policies, those policies shall specifically provide that the coverage under those policies shall “drop down” as to both defense and indemnity obligations in the event of insolvency of the primary or underlying carrier. Such “excess” or “umbrella” policies shall also contain all the other provisions required by this Agreement.

(§507) Town and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are Developer’s responsibility under the applicable Scope of Development, Developer shall at his own expense secure or cause to be secured any and all permits which may be required by Town or any other governmental agency affected by such construction, development or work. Developer shall not be obligated to construct if any permit is not issued despite good faith effort by Developer. If there is delay beyond the usual time for obtaining any such permits due to no fault of Developer, the time for obtaining permits shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. Developer shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by Town that are standard for and uniformly applied to similar projects in the Town.

(§508) Rights of Access.

Representatives of the Town shall have the reasonable right to access the Site without charges or fees, at any time during normal construction hours during the period of construction and upon reasonable notice to Developer, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of Developer. Such representatives of Town shall be those who are so identified in writing by the Town Manager. Each such representative of Town shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide Developer, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. Town shall indemnify, defend, and hold Developer harmless from any injury or property damage caused or liability arising out of Town’s exercise of this right of access.

(§509) Applicable Laws.

Developer shall carry out the construction of the improvements to be constructed by Developer in conformity with all applicable laws, including all applicable federal and state labor laws.

(§510) Nondiscrimination During Construction.

Developer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Developer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

(§511) Taxes, Assessments, Encumbrances and Liens.

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed or levied subsequent to conveyance of title. Until the date Developer is entitled to the issuance by Town of a Release of Construction Covenants, Developer shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Agreement. Developer shall remove or have removed any levy or attachment made on the Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, or to limit the remedies available to Developer in respect thereto.

(§512) Rights of Holders of Approved Security Interests in Site.

1. Definitions. As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

2. No Encumbrances Except Mortgages to Finance The Project. Notwithstanding the restrictions on transfer in Section 303, mortgages required for any reasonable method of financing of the construction of the improvements are permitted before issuance of a Release of Construction Covenants but only for the purpose of securing loans of funds used or to be used for financing the acquisition of the Site, for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any for same, so long as the refinancing does not exceed the then outstanding balance of the existing financing, including any additional costs for completion of construction, whether direct or indirect, based upon the estimates of architects and/or contractors. The Developer (or any entity permitted to acquire title under this Section) shall notify the Town in advance of any mortgage, if the Developer or such entity proposes to enter into the same before issuance of the Release of Construction Covenants. The Developer or such entity shall not enter into any such conveyance for financing without the prior written approval of the Town, which shall not be unreasonably withheld, conditioned or delayed. Any lender approved by the Town shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify the Town of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Release of Construction Covenants, whether by voluntary act of the Developer or otherwise.

3. Developer's Breach Not to Defeat Mortgage Lien. Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against

the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

4. Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

5. Notice of Default to Mortgages, Deed of Trust or other Security Interest Holders. Whenever Town shall deliver any notice or demand to Developer with respect to any breach or default by Developer hereunder, Town shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Town therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

6. Right to Cure. Each holder (insofar as the rights of Town are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

A. obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

B. add the cost of said cure to the security interest debt and the lien or obligation on its security interest; provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to Town by written agreement satisfactory to Town with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Town that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Town, to a Release of Construction Covenants from Town.

7. Town's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien

or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Town may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

B. All expenses incurred by the holder with respect to foreclosure, if any;

C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

D. The costs of any improvements made by such holder, if any; and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Town.

In the event that the holder does not exercise its option to construct afforded in this Section, and Town elects not to purchase the mortgage of holder, upon written request by the holder to Town, Town agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Town), who shall assume the obligations of making or completing the improvements required to be constructed by Developer, or such other improvements in their stead as shall be satisfactory to Town. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Town, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Town, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(ii) Second, to reimburse Town, on its own behalf and on behalf of the City, for all payments made by Town to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees.

(iii) Third, to reimburse Town, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by Town, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section.

(iv) Fourth, any balance remaining thereafter shall be paid to Developer.

8. Right of Town to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by Developer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Town of a Release of Construction Covenants for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Town may cure the default prior to completion of any foreclosure. In such event, Town shall be entitled to reimbursement from Developer or other entity of all costs and expenses incurred by Town in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any mortgage for financing permitted by this Agreement; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Town any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

9. Right of Town to Satisfy Other Liens on the Site After Conveyance of Title. After the conveyance of title and prior to the recordation of a Release of Construction Covenants for construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Town shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(§513) Release of Construction Covenants.

Upon the completion of all construction required to be completed by Developer on the Site, Town shall furnish Developer with a Release of Construction Covenants for the Site upon written request therefor by Developer. The Release of Construction Covenants shall be executed and notarized so as to permit it to be recorded in the office of the Recorder of San Bernardino County. A Release of Construction Covenants shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and of full compliance with the terms of this Agreement with respect thereto. A partial Release of Construction Covenants applicable to less than the entire Site shall not be permitted.

After the issuance of a Release of Construction Covenants, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement with respect to the Site, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the Regulatory Agreement. After issuance of a Release

of Construction Covenants, the Town shall not have any rights or remedies under this Agreement with respect to the Site, except as otherwise set forth or incorporated in the Deed or the Regulatory Agreement.

Town shall not unreasonably withhold a Release of Construction Covenants. If Town refuses or fails to furnish a Release of Construction Covenants within thirty (30) days after written request from Developer or any entity entitled thereto, Town shall provide a written statement of the reasons Town refused or failed to furnish a Release of Construction Covenants. The statement shall also contain Town's opinion of the action Developer must take to obtain a Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Town will issue its Release of Construction Covenants upon the posting of a bond in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to Town.

A Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Developer's right to obtain a Certificate of Occupancy from the Town before the Release of Construction Covenants is issued.

(§514) Estoppels.

No later than thirty (30) days after the request of Developer or any holder of a mortgage or deed of trust, Town shall, from time to time and upon the request of such holder, execute and deliver to Developer or such holder a written statement of Town that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Developer under this Agreement, if such be the determination of the Town, and certifying as to whether or not Developer has at the date of such certification complied with any obligation of Developer hereunder as to which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or Developer and shall be at no cost to Town.

(§600) USES AND MAINTENANCE OF THE SITE

(§601) Uses of the Site.

The Developer covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Developer, that during development of the Site pursuant to this Agreement and thereafter, neither the Site nor the improvements, nor any portion thereof, shall be improved, used or occupied in violation of any applicable governmental restrictions or the restrictions of this Agreement. Furthermore, Developer and its successors and assigns shall not initiate, maintain, commit, or permit the maintenance or commission on the Site or in the improvements, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Site or the improvements, or any portion thereof. Developer further covenants and agrees on behalf of itself and its successors and assigns to devote, use, operate and maintain

the Site in accordance with this Agreement, the Deed of Trust, the Notice of Affordability Restrictions, the Regulatory Agreement, the Guaranty and the other documents recorded against the Residential Units pursuant to the provisions of this Agreement.

Notwithstanding anything to the contrary or that appears to be to the contrary in this Agreement, Developer hereby covenants, on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Developer, that Developer and such successors and assigns shall use the Site solely for the purpose of constructing, maintaining and operating a project meeting the requirements and restrictions of this Agreement, including, without limitations, restriction of the rental and occupancy of the Residential Units only to Qualified Tenants for a rent not in excess of an Affordable Rent for the period specified herein.

1. Ceremonies. To ensure proper protocol and recognition of the Town Council members, Developer shall cooperate with Town staff in the organization of any Project-related groundbreakings, grand openings or any such inaugural events or ceremonies sponsored by Developer to celebrate the development which is the subject of this Agreement. Additionally, Developer shall allow Town to place appropriate signage reflecting Town's participation in the Project on Site. Said signage shall be placed on the Site upon approval of this Agreement and shall remain onsite until the commencement of the operation of the Project

(§602) Affordable Housing.

1. Construction of Affordable Housing. The Developer covenants and agrees to construct a maximum of seventy-five (75) Residential Units, including one (1) Manager's Unit, in conformity with the Scope of Development. All of the Residential Units, other than the Manager's Unit, shall be restricted to rental at an Affordable Rent and for occupation by Qualified Tenants, as described herein. The location, size and specifications of the Residential Units shall be as set forth in the Scope of Development and as further designated by the Town. All Residential Units, other than the Manager's Unit, shall be subject to and shall be leased in compliance with the tenant selection criteria described in the Regulatory Agreement.

2. Residential Unit Requirements. All Residential Units constructed pursuant to this Agreement shall be occupied at all times only by the household of the Qualified Tenant who has rented that Residential Unit. Developer covenants to cooperate with Town in taking all steps necessary to implement this requirement with respect to all Qualified Tenants. The restrictions upon rental and use of each Residential Unit shall continue for a period of fifty-five (55) years from the recordation of the Release of Construction Covenants.

3. Leasing of Residences by Developer.

A. **Marketing Program.** Prior to issuance of building permits for any portion of the Project, Developer shall prepare and obtain Town's approval (which shall not be unreasonably withheld) of a marketing and leasing program ("**Approved Marketing Program**") for the selection of tenants for the Residential Units at the Project. The Residential Units shall thereafter be marketed in accordance with the Approved Marketing Program as the same may be amended by Developer from time to time with Town's prior written approval, which shall not be

unreasonably withheld. Quarterly during the initial lease-up period, and annually thereafter, Developer shall provide Town with a report with respect to Residential Units under lease, leases in default, the status of implementation of the Approved Marketing Program, and such other information as Town may reasonably request. Town agrees to exercise reasonable efforts to assist Developer in connection with implementation of the Approved Marketing Program; provided, Town shall not be under any obligation to incur any out-of-pocket expenses in connection therewith.

B. Restricted Residences. As set forth above, each of the Residential Units shall be rented to a Qualified Tenant for a rental rate which does not exceed an Affordable Rent for the applicable Residential Unit.

C. Annual Tenancy Report. Developer shall provide Town annually, by March 1, with a report on Project occupancy for each Residential Unit, including information concerning the number of months during which each Residential Unit was occupied and the income category of each tenant household occupying a Residential Unit. The annual report and Developer's records related to each tenancy shall be subject to inspection and audit upon Town's written request.

(§603) Nondiscrimination in Employment.

The Developer covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by Developer without regard to race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §200, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. §206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq., the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. §621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324b, et seq., 42 U.S.C. §1981, the California Fair Employment and Housing Act, California Government Code §12900, et seq., the California Equal Pay Law, California Labor Code §1197.5, California Government Code §11135, the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

(§604) Obligation to Refrain from Discrimination.

Developer shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.) and the California Fair Employment and Housing Act (Cal. Government Code

§12900, et seq.) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

(§605) Maintenance of Improvements.

Developer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Town's issuance of its Release of Construction Covenants the Developer shall be responsible for maintenance of all improvements that may exist on the Site from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in reasonable condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Developer shall also maintain all landscaping required pursuant to Developer's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land in accordance with and for the term of the Regulatory Agreement. Developer's further obligations to maintain the Site, and Town's remedies in the event of Developer's default in performing such obligations, are set forth in the Regulatory Agreement. Developer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the Town that would otherwise apply, except as specified in said Regulatory Agreements. Upon the sale of any portion of the Site, Developer (but not Developer's successor) shall be released from the requirements imposed by this Section, and the financial liability therefor, as to the portion of the Site conveyed.

(§606) Notice of Affordability Restrictions.

Prior to, and as a condition of, Closing of Escrow upon the Site, the Developer shall submit for recordation upon the Site a "Notice of Affordability Restrictions" drafted to provide notice to prospective occupants or owners of the Site that this Agreement and the Related Agreements affect title to the Property such that the Site is restricted to Qualified Tenants of Low, Lower, Very Low or Extremely Low Income who are Senior Citizens. Reference should be made to the Regulatory Agreement for a more detailed description of all matters described in the Notice. The Notice of Affordability Restrictions shall be in a form approved by the Town Attorney, which approval shall not be unreasonably withheld, delayed or conditioned.

(§607) Regulatory Agreements and Declaration of Restrictive Covenants.

The Regulatory Agreement shall be recorded against the Site prior to any occupancy by a Qualified Tenant. The Regulatory Agreement shall run with title to the Site, shall be binding upon the Developer, its successors and its assigns, and shall be in a form substantially similar in all material respects to the form of the Regulatory Agreement set forth in Exhibit "F". It is understood by the parties that lenders of Senior Financing will require that any other regulatory agreement or deed of trust issued and recorded pursuant to LIHTC financing, San Bernardino County HOME financing, or other Senior Financing shall all be recorded against the Site and that Town's Regulatory Agreement will be subordinate to said Senior Financing regulatory agreements and any Senior Financing deeds of trust recorded upon the Site. To this end, the

Town will agree to execute one or more subordination agreement(s), subject to the reasonable review and acceptance thereof by the Town's legal counsel, in order to effectuate subordination of the Town's interests to the Senior Financing.

(§700) SENIOR FINANCING; TCAC/LIHTC AND COUNTY HOME FUND REQUIREMENTS

(§701) Compliance with LIHTC/TCAC Requirements.

If reasonable changes to this Agreement are required by the entities providing LIHTC funding, the parties agree to effectuate such changes in order to be in compliance with the requirements. The Town Manager is authorized, without further approval of the Town Council, to make changes to this Agreement and the Related Agreement as required to satisfy the requirements of LIHTC or TCAC; provided that changes to this Agreement that increase the Town's potential legal liabilities or financial obligations hereunder in an amount potentially exceeding \$25,000 shall require Town Council approval.

To the extent required by TCAC or LIHTC regulations, the Town's Deed of Trust and other Related Agreements shall be subordinated to LIHTC instruments recorded upon the Site in conjunction with the Project, which LIHTC instruments are deemed to be "Senior Financing".

(§702) Compliance with San Bernardino County HOME Requirements.

The Developer has been awarded an allocation of San Bernardino County "HOME" Funds in the amount of \$1,622,830.00 to be dedicated to Project construction. To the extent required by the County HOME program, the Town's Deed of Trust and other Related Agreements shall be subordinated to HOME instruments recorded upon the Site in conjunction with the Project, which HOME instruments are deemed to be "Senior Financing" for purpose hereof.

(§703) Construction & Permanent Loans as Senior Financing.

Within 90 days of Developer obtaining a reservation of LIHTC, Developer agrees to deliver to Town and obtain the approval of Town of irrevocable written commitments from financial institutions licensed to do business in California and acceptable to the Town agreeing to make a Construction Loan and a Permanent Loan to Developer and secured by a deed of trust recorded upon the Site. The amount of the commitment shall not be less than the amount of the construction contract, plus all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses of developing the Site, less the amount of Developer's equity contribution, if any, to the cost of construction. The construction commitment shall be on the usual and customary commercial terms and conditions of the lender providing the Construction and/or Permanent Loan(s).

The Town agrees that this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, shall be made junior and subordinate to liens given in connection with the Construction Loan obtained by the Developer as part of the Senior Financing, including any refinancing thereof established and obtained pursuant to and in compliance with the provisions of this Agreement and the TCAC requirements. However, it is expressly understood and agreed between the parties that the affordability covenants set forth in the Regulatory Agreement shall not be subordinated

to the Developer's Permanent Loan and shall run with the Site.

(§704) Town Instruments Junior to Senior Financing.

The Town agrees that this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, shall be made junior and subordinate to liens given in connection with the Senior Financing, including any refinancing thereof established and obtained pursuant to, and in compliance with, the provisions of this Agreement. The Town Manager is hereby authorized and directed to execute such subordination agreements, inter-creditor agreements, stand-still agreements, modifications to this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement and/or other documents as may be requested by the Senior Lender(s) to evidence subordination to the Senior Financing or accommodation with requirements of the TCAC and/or HOME programs, without further authorization from the Town Council, provided that such agreements contain written provisions that the Town Manager and Town Attorney finds are consistent with the standard requirements imposed by the Senior Financing, the tax credit investor, and the subordination requirements contained in this Agreement. The Parties acknowledge that the Deed of Trust and Regulatory Agreement shall only be subordinate to the Senior Financing instruments. With respect to lien priority, the Town's Deed of Trust shall be recorded upon the Site in a position of not lower than third in lien priority following other secured loan or deed of trust instruments included in the Senior Financing.

(§800) DEFAULTS, REMEDIES AND TERMINATION

(§801) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice, unless the default cannot be reasonably cured within such thirty days in which case the defaulting party shall have a reasonable time to effect such cure so long as the defaulting party is diligently acting to do so in as timely a fashion as is reasonable. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Developer's General Partner and Related Entity shall have the right but not the obligation to cure any default of Developer under this Agreement and Town agrees to accept any cure tendered by Developer's General Partner and Related Entity on behalf of Developer within the cure periods stated in this section.

Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition or promise, shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the

time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(§802) No Waiver.

Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

(§803) Legal Actions.

1. Institution of Legal Actions. In addition to any other rights or remedies, and subject to the requirements of Section 801, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

2. Applicable Law and Forum. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against Town, service of process on Town shall be made by personal service upon the Town Clerk of Town or in such other manner as may be provided by law.

In the event that any legal action is commenced by Town against Developer, service of process on Developer shall be made in such manner as may be provided by law and shall be valid whether made within or outside of the State of California.

(§804) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(§805) Specific Performance.

In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the

appropriateness of such remedy. In this regard, Developer specifically acknowledges that Town is entering into this Agreement for the purpose of assisting in the development of the Site and not for the purpose of enabling Developer to speculate with land.

(§807) Attorneys' Fees.

If either party to this Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of, this Agreement, or is made a party to any such action or proceeding by the Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party, as between the Developer and Town only, in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "prevailing party" shall be the party determined as such by a court of law, pursuant to the definition Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

(§808) Termination After Closing.

A. Termination By Town. The Town may terminate this Agreement upon the occurrence of any of the following events:

(i). Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement;

(ii). Developer (or any successor in interest) becoming insolvent or Developer (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than the Town, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Developer's property and/or the Site;

(iii). Developer is in Default of this Agreement and fails to cure such Default within the time set forth in Section 801; or

(iv). Town is not able to acquire sufficient assurances (i) of the validity and/or enforceability of this Agreement or its ability to pay Remainder Loan Proceeds as a result of AB 26 (or any other law), or (ii) that the Town holds valid, transferrable title to the Site despite implementation of AB 26 (or any other law); or

(v). Developer is unable to secure LJHTC funding in either the 2012 or 2013 year(s); or

(vi). Developer is unable to obtain Construction Financing or secure Tax Credits after making four (4) consecutive applications.

If, after the occurrence of any of the above-entitled events, the Town elects, in its sole discretion, to terminate this Agreement, then all rights of Developer and any person or entity claiming by or through Developer arising under this Agreement or with regard to the Site as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of the Developer to indemnify or reimburse the Town shall continue in full force and effect and the Town shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

B. Termination by Developer. In the event that the Developer is not in Default under this Agreement, Developer may terminate this Agreement upon the occurrence of any of the following:

(i) Town is in Default of any material provision of this Agreement and fails to cure such Default within the time set forth in Section 801; or

(ii) Town fails to fund the Town Loan (or what remains as outstanding payable to Developer) at the time and in the amounts required by this Agreement; or

(iii) Developer is unable to secure LIHTC funding in either the 2012 or 2013 year(s).

C. Limitations Imposed by Senior Financing. Notwithstanding anything to the contrary contained in this Agreement or in the Related Agreements, the rights of the parties to declare defaults hereunder and exercise their respective rights and remedies described herein or in the Related Agreements shall be subject in all cases to the conditions and limitations imposed thereon by the Senior Financing. In the event of any conflict between the rights and remedies of the parties provided under this Agreement or the Related Agreements and the limitations on such rights and remedies under any subordination or intercreditor agreement entered into in connection with the Senior Financing documents, such limitations shall be deemed controlling provided they are consistent with the standard requirements imposed by Fannie Mae or Freddie Mac, as applicable, on subordinate cash flow obligations.

(§900) GENERAL PROVISIONS

(§901) Notices, Demands and Communications Between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; or by facsimile, if such facsimile is followed by a notice sent out the same day by mail; in any case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

Town: Town of Yucca Valley
57090 Twentynine Palms Highway
Yucca Valley, CA 92284
Attn: Town Manager

Copy to: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Town Attorney

Developer: Yucca Valley Senior Housing Partners, L.P.
9065 Haven Ave., Suite 100
Rancho Cucamonga, CA 91730
Attn: Richard J. Whittingham, CFO

Copy to: Law Office of Edward A. Hopson
655A North Mountain Ave
Upland, CA 91786
Attn: Edward A. Hopson

(§902) Nonliability of City and Town Officials and Employees; Conflicts of Interest; Commissions.

1. Personal Liability. No member, official, employee, agent or contractor of Town shall be personally liable to Developer in the event of any default or breach by Town or for any amount which may become due to Developer or on any obligations under the terms of the Agreement; provided, it is understood that nothing in this Section 902 is intended to limit Town's liability.

2. Financial Interest. No member, official, employee or agent of Town shall have any financial interest, direct or indirect, in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.

3. Commissions. Neither the Town nor the Developer has retained any broker or finder or has paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement. No party shall be liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Agreement, and each party agrees to hold the other harmless from any claim by any broker, agent, or finder retained by such party.

4. Nonliability of Partners of Developer. Other than as required by the Guaranty, no partner of Developer, or member, shareholder, partner, officer, director, employee, agent, or attorney of any partner of Developer shall be personally liable to Town in the event of any default or breach by Town or for any amount which may become due to Town or on any obligations under the terms of the Agreement.

(§903) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots, systemic failure of the financial markets, floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Town shall not excuse performance by Town unless the act or failure is caused by the acts or omissions of Developer); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

The following shall not be considered as events or causes beyond the control of Developer, and shall not entitle Developer to an extension of time to perform: (i) Developer's failure to obtain financing for the Project (except as provided in Section 401), (ii) Developer's failure to negotiate agreements with prospective Qualified Tenants or management for the Project, or (iii) changes in economic conditions.

Times of performance under this Agreement may also be extended by mutual written agreement by Town and Developer. The Town Manager of Town shall have the authority on behalf of Town to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

(§904) Books and Records.

1. Developer to Keep Records. Developer shall prepare and maintain all books, records and reports necessary to substantiate Developer's compliance with the terms of this Agreement or reasonably required by the Town.

2. Right to Inspect. Either party shall have the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the other party pertaining to the Site as pertinent to the purposes of this Agreement.

3. Ownership of Documents. Copies of all drawings, specifications, reports, records, documents and other materials prepared by Developer, its employees, agents and subcontractors, in the performance of this Agreement, which documents are in the possession of Developer and are not confidential shall be delivered to Town upon request in the event of a termination of this Agreement, however, Developer shall be entitled to reimbursement from Town for the cost to prepare any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors as a result of the exercise by Town of its

rights hereunder. Any drawings, specifications, reports, records, documents and other materials prepared by Developer's subcontractors shall be delivered without representation or warranty by Developer. The Town shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same. Developer makes no warranty or representation regarding the accuracy or sufficiency of such documents for any future use by Town, and Developer shall have no liability therefor.

(§905) Assurances to Act in Good Faith.

Town and Developer agree to execute all documents and instruments and to take all action, including making a deposit of funds in addition to such funds as may be specifically provided for herein, and as may be required in order to consummate conveyance and development of the Site as herein contemplated, and shall use their best efforts, to accomplish the closing and subsequent development of the Site in accordance with the provisions hereof. Town and Developer shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

(§906) Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. This Agreement includes all attachments attached hereto, which are by this reference incorporated in this Agreement in their entirety.

(§907) Entire Agreement, Waivers and Amendments.

With the exception of that certain Exclusive Negotiating Agreement between the Related Entity and Town dated December 21, 2010, this Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Agreement supersedes all negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Town or Developer, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Town and Developer.

(§908) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

(§909) Time for Acceptance of Agreement by Town.

This Agreement, when executed by Developer and delivered to Town, must be authorized, executed and delivered by Town, after consideration at a public hearing. After execution by

Developer, this Agreement shall be considered an irrevocable offer until such time as Town is authorized to execute and deliver the Agreement.

(§910) Execution.

1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

2. Town represents and warrants that: (i) it is a general law city duly organized and existing under the laws of the State of California; (ii) by proper action of Town, Town has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Town does not violate any provision of any other agreement to which Town is a party.

3. Developer represents and warrants that: (i) it is duly organized and existing under the laws of the State of California; (ii) by proper action of Developer, Developer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the Town.

“TOWN”
TOWN OF YUCCA VALLEY,
A California general law municipality

Date _____

Mayor Dawn Rowe

ATTEST:

Janet Anderson, Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Lona N. Laymon, Town Attorney

“DEVELOPER”
YUCCA VALLEY SENIOR HOUSING PARTNERS L.P.,
a California Limited Partnership,
By its General Partner:

THE SOUTHERN CALIFORNIA HOUSING
DEVELOPMENT CORPORATION OF THE INLAND
EMPIRE, a California non-profit public benefit corporation

Date _____

Name: _____

And, its Related Entity:
NATIONAL COMMUNITY RENAISSANCE OF
CALIFORNIA, a California public benefit corporation

Date _____

Name: _____

[End of Signatures]

EXHIBIT A

Legal Description of Site

EXHIBIT B

Scope of Development

EXHIBIT C

Promissory Note

EXHIBIT D

Deed of Trust

EXHIBIT E

Grant Deed

EXHIBIT F
Regulatory Agreement

EXHIBIT G

Release of Construction Covenants

EXHIBIT H

Project Budget