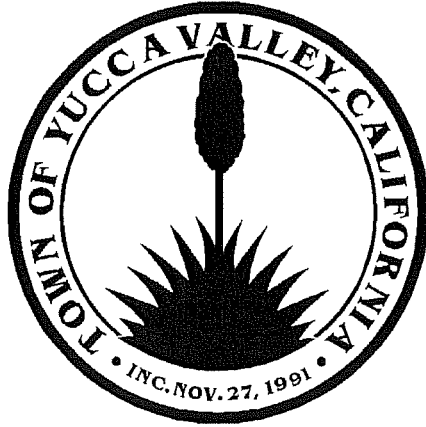


TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING



*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, FEBRUARY 5, 2013
CLOSED SESSION:
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
Merl Abel, Mayor
Robert Lombardo, Mayor Pro Tem Member
George Huntington, Council Member
Dawn Rowe, Council Member

* * * *

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

**AGENDA
MEETING OF THE
TOWN OF YUCCA VALLEY COUNCIL
TUESDAY, FEBRUARY 5, 2013
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)

OPENING CEREMONIES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

INVOCATION

Led by Pastor Stephen Jones, First Southern Baptist Church

PRESENTATIONS, RECOGNITIONS, INTRODUCTIONS

1. Recognition of Yucca Valley High School Cross Country Team

APPROVAL OF AGENDA

Action: Move _____ 2nd _____ Vote _____

CONSENT AGENDA

- 1-10 2. Minutes of the Special Town Council Meetings of January 22, 2013 and January 30, 2013.

Recommendation: Approve the minutes as presented.

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

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

- 11-13 4. AB 1234 Reporting Requirements

Recommendation: Receive and file the AB 1234 Reporting Requirement Schedule for the month of January 2013

- 14-16 5. Project No. 8325 – SR62/SR247 Median Island and Traffic Signal Improvements, Acceptance of Project as Substantially Complete, 2012-13 Budget Amendment

Recommendation: 1) Accept the project as substantially complete, authorize staff to file the Notice of Completion, authorize the reduction of the Faithful Performance Bond to 10%, and direct staff to retain the Labor and Material Bond for six (6) months for Project No. 8325 2) Amend the FY 2012-13 budget for Project No. 8325 by increasing the project budget by \$10,000, from \$262,000 to \$272,000.

- 17-32 6. HDWD / Town Water Supply Agreement Execution and Approval of Payment

Recommendation: Execute the final draft of the Water Supply Agreement with Exhibit A, identifying the CIMIS water accounts and budgets affected by the agreement and approve the payment of \$400,000 to the Hi Desert Water District (“District”).

- 33-35 7. Declaring Certain Town Property as Surplus, Authorization to Dispose of Surplus Property.

Recommendation: Declare the attached list of property as surplus, and approve the sale of surplus supplies and equipment at an in-house public auction.

36-37 8. Treasurer's Report for the Quarter Ending December 31, 2012

Recommendation: Receive and file the Treasurer's Report for the second quarter of FY 2012-13

38-44 9. Warrant Register, February 5, 2013.

Recommendation: Ratify the Warrant Register total of \$273,179.26 for checks dated January 24, 2013. Ratify Payroll Registers total of \$152,026.90 for checks dated January 18, 2013.

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 2-9)

Action: Move _____ 2nd _____ Vote _____

PUBLIC HEARING

45-75 10. Annexation Area No. 2 (Improvement Area No. 3) (Super Wal-Mart), APN 0601-201-37 to Community Facilities District No. 11-1 (continued from January 22, 2013)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA FOR THE ANNEXATION OF IMPROVEMENT AREA NO. 3 TO COMMUNITY FACILITIES DISTRICT NO. 11-1, ANNEXATION AREA #2, IMPROVEMENT AREA #3 (SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE DISTRICT, AND SUBMITTING THE LEVY OF THE SPECIAL TAX TO THE QUALIFIED ELECTORS OF THE AREA TO BE ANNEXED TO THE DISTRICT

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA SETTING A DATE FOR AN ELECTION ON THE ANNEXATION OF ANNEXATION AREA NO. 2 (IMPROVEMENT AREA NO. 3) TO COMMUNITY FACILITIES DISTRICT NO. 11-1 (SERVICES), SPECIAL TAX LEVY FOR FY 2013/14

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, DECLARING RESULTS OF THE SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN IMPROVEMENT AREA 3, ANNEXATION NO 2, OF COMMUNITY FACILITIES DISTRICT NO. 11-1 (SUPER WAL-MART)

Staff Report

Open Public Hearing

Recommendation: Adopt the Resolutions to annex the project into Community Facilities District No. 11-1, Annexation Area No. 2. (Improvement Area No. 3) and levy a special tax thereon to finance certain services as follows, and introduce the Ordinance.

- 1. Resolution for the Annexation of Annexation Area No. 2, Improvement Area No. 3 to Community Facilities District No. 11-1 (Services), preliminary establishing an appropriation limit for Improvement Area No. 3, and submitting the levy of the special tax to the qualified electors within the District.**
- 2. Resolution setting a date for an election on the annexation of Annexation Area No. 2, Improvement Area No. 3, to Community Facilities District No. 11-1 (Services), and setting an appropriation limit.**
- 3. Resolution declaring results of the special election and directing recording of Notice of Special Tax Lien.**
- 4. Ordinance of the Town Council of the Town of Yucca Valley, California, authorizing the levy of a special tax within Community Facilities District No. 11-1, Annexation No. 2, Improvement Area No. 3 (Super Wal-Mart)**

Action: Move _____ 2nd _____ Vote _____.

DEPARTMENT REPORTS

- 76-77 11. Appointments to Parks, Recreation and Cultural Commission and Planning Commission

Staff Report

Recommendation: 1) Affirm the appointment of Tim Humphreville and Jeff Drozd to the Planning Commission and Laurine Silver and Meredith Jones to the Parks, Recreation and Cultural Commission; 2) Council Member Rowe nominate a member to the Planning Commission to fill the unexpired term of Commissioner Alberg.

Action: Move _____ 2nd _____ Vote _____.

- 78 12. Selection of Ad Hoc Committees to meet with Basin Wide Foundation and Supervisor Ramos

Staff Report

Recommendation: Select two Council Members each to serve on ad-hoc committees to meet with 1) Basin Wide Foundation and 2) Supervisor Ramos

Action: Move _____ 2nd _____ Vote _____.

- 79-110 13. Second Amended & Restated Employment Agreement Between the Town of Yucca Valley and Mark Nuaimi

Recommendation: Approve the Second Amended & Restated Employment Agreement between the Town of Yucca Valley and Mark Nuaimi

Action: Motion _____ 2nd _____ Vote _____.

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

14. Council Member Rowe
15. Council Member Huntington
16. Mayor Pro Tem Lombardo
17. Mayor Abel

ANNOUNCEMENTS

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

**5:00 p.m. Budget Development Workshop,
6:00 p.m., Tuesday, February 19, 2013, Yucca Valley Community Center Yucca
Room**

CLOSING ANNOUNCEMENTS

ADJOURNMENT

**TOWN OF YUCCA VALLEY
SPECIAL TOWN COUNCIL MEETING MINUTES
JANUARY 22, 2013**

OPENING CEREMONIES

Mayor Abel called the meeting to order at 6:00 p.m.

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

Staff Present: Town Manager Nuaimi, Deputy Town Manager Stueckle,
Community Services Director Schooler, Administrative Services
Director Yakimow, Police Lt. Toms, and Town Clerk Anderson

PLEDGE OF ALLEGIANCE

Led by Mayor Pro Tem Lombardo

INVOCATION

Led by Chaplain Mike Kelliher, Joshua Springs Calvary Chapel

AGENCY REPORTS

Chamber of Commerce

1. Monthly Chamber of Commerce Report for December 2012

Jennifer Collins, Chamber President, gave the monthly report for December 2012 and highlights of the year's activities.

Hi Desert Water District

2. Water and Wastewater Project Updates.

Mark Ban, Hi Desert Water District, gave a report regarding the activities of the Water District and the status of the wastewater project.

APPROVAL OF AGENDA

Council Member Lombardo moved to approve the agenda. Council Member Huntington seconded. Motion carried 4-0.

CONSENT AGENDA

3. **Approve**, Minutes of the Special Town Council Meetings of December 4, 2012 and December 18, 2012, Regular Town Council Meeting of December 18, 2012, as presented.
4. **Waive**, further reading of all ordinances (if any in the agenda) and read by title only.
5. **Receive and file**, Monthly Statistical Fire Department Report for December 2012
6. **Receive and file**, AB 1234 Reporting Requirement Schedule for the month of December 2012
7. **Approve**, Amendment Number 6 to the Morongo Basin Transit Authority (MBTA) Joint Powers Agreement (JPA) to amend Board of Supervisors Representation
8. **Award**, contract for professional design services to Minagar & Associates, Inc., for the design of the Sage Avenue Improvements and replacement of outdated radar speed indication signs at the three other school sites, including the preparation of bid ready construction documents in the amount of \$46,317.00, and authorize the Town Manager, Town Attorney, and the Mayor to sign all necessary documents to complete the project, Safe Routes to School Grant Funds (SR2S) – Town Project No. 8320
9. **Adopt**, Resolution No. 13-01, approving the Administering Agency-State Master Agreement No. 00394S, and the Program Supplemental Agreement No. J92 Rev. 000, authorizing the Town Manager to sign all necessary documents in the program, Federal Project No. SR5SL-5466(020), Sage Avenue Improvements, Caltrans District 8/Town of Yucca Valley.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, APPROVING PROGRAM MASTER AGREEMENT NO.00394S, AND PROGRAM SUPPLEMENTAL AGREEMENT NO. J92 REV.000 FOR THE SAFE ROUTES TO SCHOOL PROJECT AND APPROVING AUTHORIZED SIGNATORS TO ALL NECESSARY AGREEMENTS AND DOCUMENTS

10. **Ratify**, Warrant Register total of \$631,324.72 for checks dated December 19-20, 2012 and January 10, 2013. Ratify Payroll Registers total of \$468,629.30 for checks dated December 7, 2012 to January 4, 2013.

Council Member Rowe moved to adopt Consent Agenda Items 3-10. Council Member Lombardo seconded. Motion carried 4-0.

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

PUBLIC HEARING

11. Annexation Area No. 2 (Improvement Area No. 3) (Super Wal-Mart), APN 0601-201-37 to Community Facilities District No. 11-1

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA FOR THE ANNEXATION OF IMPROVEMENT AREA NO. 3 TO COMMUNITY FACILITIES DISTRICT NO. 11-1, ANNEXATION AREA #2, IMPROVEMENT AREA #3 (SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE DISTRICT, AND SUBMITTING THE LEVY OF THE SPECIAL TAX TO THE QUALIFIED ELECTORS OF THE AREA TO BE ANNEXED TO THE DISTRICT

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA SETTING A DATE FOR AN ELECTION ON THE ANNEXATION OF ANNEXATION AREA NO. 2 (IMPROVEMENT AREA NO. 3) TO COMMUNITY FACILITIES DISTRICT NO. 11-1 (SERVICES), SPECIAL TAX LEVY FOR FY 2013/14

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, DECLARING RESULTS OF THE SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN IMPROVEMENT AREA 3, ANNEXATION NO 2, OF COMMUNITY FACILITIES DISTRICT NO. 11-1 (SUPER WAL-MART)

Mayor Abel opened the public hearing and questioned if the Town Clerk has proof of publication and mailing of notice of hearing. Town Clerk Anderson advised that proof of publication is on file in the Town Clerk’s office showing that notices were published and mailed in a timely manner. Mayor Abel questioned if there have been any written protests filed with the Clerk concerning this matter. Town Clerk Anderson advised that no written protests have been received.

Town Manager Nuaimi requested continuation of the item to February 5, 2013 in order to receive final documentation from Wal-Mart. Noted this is a typical community facilities district where the property owner taxes themselves to maintain the infrastructure they are installing.

Mayor Abel opened the floor for public comment, and as no one appeared to speak he advised there will be another opportunity at the February 5th Town Council Meeting.

Council Member Rowe moved to continue the public hearing to February 5, 2013. Council Member Huntington seconded. Motion carried unanimously.

DEPARTMENT REPORTS

12. Spring 2013 Program Offerings – Community Services Department.

Community Services Director Schooler presented the summary of the programs put on by the Community Services Department's Museum and Recreation Staff for the spring.

Council Member Huntington questioned if the schedule echoes the same offerings as last spring. Community Services Director Schooler advised there are just a few changes.

Council Member Rowe moved to receive and file the report outlining the Spring 2013 programs and events to be organized and conducted by the Community Services Department. Council Member Huntington seconded. Motion carried unanimously.

13. Town Invocation Policy, Resolution

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, ADOPTING A POLICY REGARDING INVOCATIONS AT MEETINGS OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY

Staff Report Town Manager Nuaimi

This item has been brought forward in response to a council request in light of recent controversy surrounding a motivational speaker at a local high school, and recent correspondence to the Town of Yucca Valley concerning its policy of opening meetings in prayer. Staff has taken the policy from the City of Lancaster and copied it because it has been court tested.

Jason Gueltzow, Yucca Valley, spoke in opposition to the policy recommending Council wait until the decision comes from the 9th Circuit Court regarding the Lancaster policy.

Stephen Jones, Yucca Valley, spoke in favor of the item noting it will add more diversity once it is approved.

Margo Sturges, Yucca Valley, recommended, if the Lancaster Policy is under review, the Council should wait for the decision.

Bob Guthrie, Yucca Valley, spoke in favor of the item, noting he will fight for the right to say who his creator is.

Thomas Stanifer, Yucca Valley, spoke in favor of the item, noting he is unwilling to surrender to any organization that violates his 1st Amendment rights.

Gregory Martin, Yucca Valley, spoke in favor, stating he thinks the Town did a good job.

Mike Kelliher, Yucca Valley, spoke in favor, advising of the many references to Jesus Christ throughout the history of this country.

Charles Springer, Yucca Valley, spoke in favor of continuing invocations at the Council Meetings.

Town Manager Nuaimi advised speaker cards were also received from Donna Jones and Elena Angioi who did not wish to speak but indicated they are in favor of continuing with invocations to open the meetings.

John Snethen, Yucca Valley, spoke in favor of the having invocations.

Elena Angioi, Yucca Valley, spoke reiterating her agreement with continuing the tradition of having an invocation.

Sarann Graham, Yucca Valley, recommended Council consider changing invocation to inspirational messages.

Council Member Rowe explained the reason for asking that the item be agendaized, and the need for a more formal policy.

Council Member Huntington stated that the key is wanting to address criticism in the community and to put the Town on the path of diversity.

Council Member Lombardo agreed that the invocation is an important item to have on our agenda adding that the Council wants it to be inclusive.

Mayor Abel requested explanation and direction regarding the point made earlier about the city of Lancaster's policy being under review at the 9th District Court. Town Attorney Laymon advised the Town did receive letters that were direct threats of litigation for this matter. The basis was the fact that the Town doesn't currently have written policy noting that not having one puts the Town in a worse position.

Mayor Abel commented this action opens the opportunity to all faiths and all beliefs, adding the Town Council understands that we represent all the citizens of the town.

Upon discussion, Council consensus is to move forward with a policy now rather than waiting.

Council Member Rowe moved to adopt Resolution No. 13-02, documenting the Town policy regarding invocations at meetings. Council Member Huntington seconded. Motion carried 4-0.

14. FY 2013-14 Budget Preparation Calendar

Administrative Services Director Yakimow advised the calendar is being presented to demonstrate the multiple opportunities for the public to have an opportunity to have their voices heard in the budget process. In addition to budget workshops prior to the February 19th and April 2nd Town Council Meetings, there will be a Saturday Workshop. The original date proposed was Saturday, April 20th, however that date is the date of the Earth Day celebration, so the Town Clerk will poll the Council regarding availability on that date.

Council Member Lombardo commented regarding the importance of public involvement in the budget process.

Council Member Lombardo moved to approve the proposed Budget Calendar. Council Member Huntington seconded. Motion carried 4-0.

FUTURE AGENDA ITEMS

Mayor Abel requested discussion regarding the possibility of forming an ad-hoc committee to meet with the Basin Wide Foundation to discuss Brehm Park. Council agreed.

PUBLIC COMMENT

Bob Guthrie, Yucca Valley, commented regarding the wastewater project and the destruction caused by the use of petroleum based cleaning products.

Margo Sturges, Yucca Valley, commented regarding those participating in the meeting tonight.

Roger Duran, Yucca Valley, wished the Council luck with making the right decisions.

STAFF REPORTS AND COMMENTS

15. Johnson Valley Petition

Town Manager Nuaimi advised of an on-line petition to the White House regarding the proposed Marine Base expansion into Johnson Valley, and requested Council concurrence whether or not to have staff add the link for the petition to the Town's website, and to use outreach through our constant contact account.

Council Member Rowe advised there is only a 30 day period to sign the petition and noted that even though the rules have changed now requiring 100,000 signatures instead of 25,000, this particular petition is grandfathered in for the 25,000.

Council agreed to linking the petition on the Town's webpage.

Town Manager Nuaimi thanked all those who participated in the Strategic Plan session noting there were over 50 in attendance in addition to the Town Council and Management Team.

Town Manager Nuaimi stated there is need to have an ad-hoc committee to meet with Supervisor Ramos, and upon Council concurrence, staff will place both the ad-hoc committee for the Basin Wide Foundation and Supervisor Ramos on the next Town Council meeting for action.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

16. Council Member Rowe

Thanked staff for the Strategic Planning Session.

17. Council Member Huntington

Thanked staff for the Strategic Planning Session.

Commented regarding the number of calls received by the Fire Department last year.

Advised the construction contracts are all signed for animal shelter so construction should begin shortly.

Commented regarding the need for the Planning Commission to start looking at neighborhood solar requirements.

18. Mayor Pro Tem Lombardo

Commented regarding the Strategic Planning Session.

Commented in agreement for the need of an ad-hoc committee for Brehm Park.

19. Mayor Abel

Advised of comments from the community expressing appreciation for the Strategic Planning Session.

Expressed appreciation for the format of community workshops on a Saturday.

Stated he is glad the Town is moving forward on the safe routes to school program.

Advised of a link on the Town's webpage showing the results of the polling at the Strategic Planning Session.

ANNOUNCEMENTS

Next Town Council Meeting, Tuesday, February 5, 2013, 6:00 p.m.

CLOSED SESSION

Margo Sturges, Yucca Valley, thanked the Council for holding the Town Manager evaluation in conjunction with a regular meeting.

Mayor Abel adjourned to Closed Session at 7:15 p.m.

- 20. Government Code Section 54956.8, Conference with Real Property Negotiators.**
State law provides the opportunity for closed session for real property purchase negotiations, prior to placement of the matter on a regularly scheduled meeting agenda for formal action.

Property: APN 061-171-20, 6457 El Dorado
3 Pointe Asset Management/Town of Yucca Valley
Mark Nuaimi, Real Property Negotiator
Real Property Negotiations

21. **Closed Session pursuant to Government Code Section 54956.9(c), Potential litigation -- One (1) Matter**
22. **Closed Session pursuant to Government Code Section 54957, Public Employee Performance Evaluation (Town Manager)**
23. **Closed Session pursuant to Government Code Section 54957.6, Conference with Labor Negotiators, Negotiators: Mark Nuaimi; Employee Organization(s): Unrepresented Exempt, Unrepresented Non-Exempt**

Mayor Able called the Closed Session to order at 7:25 p.m. and reconvened to open session at 9:05 p.m. Town Attorney Laymon advised there was no reportable action taken.

ADJOURNMENT

There being no further business the meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Jamie Anderson, MMC
Town Clerk

**TOWN OF YUCCA VALLEY
SPECIAL TOWN COUNCIL MEETING MINUTES
JANUARY 30, 2013**

The special meeting of the Town of Yucca Valley Council was called to order at 5:00 a.m. by Mayor Abel. Council Members Huntington, Lombardo, Rowe and Mayor Abel were present.

Mayor Abel asked if there were any public comments prior to going into Closed Session. There were no public comments offered.

CLOSED SESSION

1. **Closed Session pursuant to Government Code Section 54957, Public Employee Performance Evaluation (Town Manager)**
2. **Closed Session pursuant to Government Code Section 54957.6, Conference with Labor Negotiators, Negotiators: Mark Nuaimi; Employee Organization(s): Unrepresented Exempt, Unrepresented Non-Exempt.**

Mayor Abel adjourned to closed session at 5:01 p.m. after reading the items to be discussed. He reconvened to open session at 6:11 p.m. and announced there was no reportable action taken.

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:11 p.m.

Respectfully submitted,

Jamie Anderson
Town Clerk



TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Director of Administrative Services
 Sharon Cisneros, Senior Accountant
Date: January 28, 2013
For Council Meeting: February 5, 2013
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 January 2013.

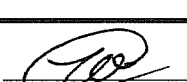
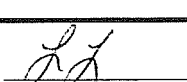
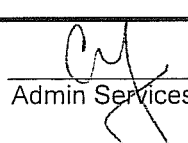

Order of Procedure:

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

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.

Reviewed By:

 Town Manager
  Town Attorney
  Admin Services
  Finance

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

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.

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 January 2013

Date of Travel	Organization	Description	Location
Mayor Abel	League of California Cities	New Mayors and Council Member Academy	Sacramento, CA
Mayor Pro Tem Lombardo	No Reportable Meetings		
Councilmember Huntington	No Reportable Meetings		
Councilmember Rowe	League of California Cities	Desert Mountain Division Meeting (Dec 12)	Palmdale, CA
Councilmember -Vacant			

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Alex Qishta, Project Engineer
Date: January 29, 2013
For Council Meeting: February 5, 2013

Subject: Project No.8325 – SR62/SR247 Median Island and Traffic Signal Improvements
Acceptance of Project as Substantially Complete
2012-13 Budget Amendment

Prior Council Review: The Town Council appropriated funds for this project with adoption of prior budgets. On October 18, 2011, the Town Council approved plans and specifications for Project No.8325, authorized the Town Clerk to advertise and receive bids. On April 17, 2012, the Town Council awarded Project No.8325 to Steiny and Company, Inc., of Baldwin Park, California.

Recommendation: That the Town Council:

1. Accepts the project as substantially complete, authorizes staff to file the Notice of Completion, authorizes the reduction of the Faithful Performance Bond to 10%, and directs staff to retain the Labor and Material Bond for six (6) months for Project No.8325;
2. Amends the FY 2012-13 budget for Project No.8325 by increasing the project budget by \$10,000, from \$262,000 to \$272,000.

Executive Summary: Project No. 8325 involves the installation of raised medians on Joshua Lane and SR 247, upgrading to the traffic signal located at the intersection of SR62/SR247 to include protected left hand turning movements, and extending the turn pocket in the existing median islands for east bound traffic on SR 62.

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 SR62/SR247 project provided median islands, signal light modifications, and appurtenant work as necessary.

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

All work required for the project has been satisfactory completed.

It is appropriate for the Town to accept the work and file a Notice of Completion.

It is also appropriate to reduce the Faithful Performance Bond being as held as a surety to 10%. The Labor and Material Bond shall be retained for a period of six (6) months, and then released, provided no liens or stop notices have been filed.

Alternatives: Staff recommends no alternative action. The project has been satisfactorily completed.

Fiscal impact: The following outlines project costs related to the construction contract of the work as bid.

Construction Contract	\$245,371.00
Construction Contingency	24,629.00
Total	\$270,000.00
Steiny and Company Contract	\$245,371.00
Change Order #1	39,375.00
Cal Trans Permit Deduct	(18,750.00)
Additive Bid Item 5 (add'l curbing)	2,713.60
Total	\$268,709.60
Contract Work Under/(Over) Budget	\$ 1,290.40

The expenditure of a significant portion of construction contingency was necessary based upon field conditions and project design modifications for stamped concrete, striping and associated labor. The stamped concrete was not clearly identified in the project specifications and represents the largest segment of contingency expenditure.

Budget Summary

While the construction project was delivered within the construction budget, this project was initiated in FY 2006-07. Total costs include not only design and construction, but included the additional contract services analysis that was necessary to address the Caltrans required median islands and impacts to the business community on the outer highways. Finally, grant projects allow for a 5% overhead allocation against the project to reimburse the Town for costs associated with the contracting, accounting, and other support activity.

In order to accommodate necessary overhead allocations to the project, a current year budget amendment of \$10,000 is required. This funding will come from the Fund 522 – Measure I Major Arterials fund balance, and is accommodated by an actual year end fund balance that was \$71,000 higher than the projected fund balance in the FY 2012-13 Adopted Budget.

The recommended action will increase the FY 2012-13 budget for this project by \$10,000, from \$262,000 to \$272,000.

Attachments: NA

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Director of Administrative Services
Date: January 31, 2013
For Council Meeting: February 5, 2013
Subject: HDWD / Town Water Supply Agreement Execution and Approval of Payment

Prior Council Review: The Town Council approved the Water Supply Agreement at its meeting of June 26, 2012. The Hi Desert Water District approved the Agreement at its meeting of December 19, 2012.

Recommendation: It is recommended that Town Council:

- Review the CIMIS water accounts and budgets as provided by the Hi Desert Water District ("District") and authorize the Town Manager to execute the final draft of the Water Supply Agreement.
- Approve the payment of \$400,000 to the District.

Order of Procedure:

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

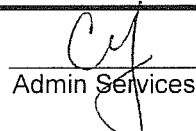
Discussion:

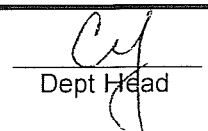
The District provides retail potable water service to its customers within its service area in the Town and surrounding areas of San Bernardino County. The District holds a contract with the Mojave Water Agency ("MWA") to receive imported water from the State Water Project ("SWP"). The District also holds rights to pump groundwater from and store water in the Warren Valley Groundwater Basin.

Reviewed By:


Town Manager


Town Attorney


Admin Services


Dept Head

Department Report
 Consent

Ordinance Action
 Minute Action

Resolution Action
 Receive and File

Public Hearing
 Study Session

The Town currently receives Domestic Water Service and Irrigation Water Service from the District. Town and District staff negotiated a Water Supply Agreement that would enable the Town to pre-purchase water to serve Town park irrigation needs. This arrangement will provide benefits to both the Town and District. In securing this arrangement, the Town will realize savings over current CIMIS irrigation rates. The District will benefit from up-front cash receipts that can be used to purchase additional water from MWA during seasons when supply is plentiful.

Under the terms of this Agreement, the Town will pre-purchase \$400,000 of Supplemental Water. This amount will be credited to the Town and as water is delivered to park facilities, the balance will be adjusted according to the costs. Based upon current usage, this agreement amounts to approximately a ten-year pre-purchase.

In accordance with the agreement, the Town will maintain water usage within the budgeted amount of water per facility, as outlined in the attached Exhibit "A". If the Town exceeds the budgeted amounts, the District has the ability within the Agreement to suspend and/or terminate the Water Supply Agreement in order to promote continued water conservation on the part of the Town.

Alternatives: None recommended.

Fiscal impact: This Water Supply Agreement will yield annual savings to the Town in excess of \$40,000 based upon current irrigation expenditures. The proposed payment of the Town will result in the establishment of a pre-paid asset and a corresponding reduction in cash balance. The transaction will be reflected on the Town's Financial Statements as a non-cash asset, and will not have an impact on Fund Balance. The pre-paid asset will be reduced annually through budgeted water expenditures at the affected park facilities.

Attachments: Town of Yucca Valley CIMIS Accounts - Exhibit A
Water Supply Agreement

Exhibit A

Town of Yucca Valley CIMIS Accounts and Water Budgets

Town of Yucca Valley Cimis Accounts		Exhibit A
<u>Name</u>	<u>Location</u>	<u>Annual Budget in Acre Feet</u>
Park-N-Ride	7483 Kickapoo	3,704
Community Center	57090 Antelope	4,147
Ball Field	57090 Antelope	8,090
Town Hall	57090 Antelope	2,743
Machris Park	Santa Barbara	4,375
South Side Park	8490 Warren Vista	4,108
	Total	27,167

Water Supply Agreement

Town Council Meeting

February 5, 2013

WATER SUPPLY AGREEMENT

This Water Supply Agreement (“Agreement”) is made and entered into by and between the Hi-Desert Water District (“District”), a public entity, and the Town of Yucca Valley (“Town”), a public entity. The District and the Town are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

A. The District provides retail potable water service to its customers within its service area in the Town and surrounding areas of San Bernardino County. The District holds a contract with the Mojave Water Agency (“MWA”) to receive imported water from the State Water Project (“SWP”). The District also holds rights to pump groundwater from and store water in the Warren Valley Groundwater Basin.

B. The Town currently receives Domestic Water Service and Irrigation Water Service from the District. The Town seeks to enter into a cooperative arrangement with the District to facilitate the delivery of Supplemental Water for the benefit of the Town’s existing and future irrigation needs.

C. On the terms and conditions set forth herein, the District is willing to provide Supplemental Water to the Town for irrigation purposes only, for the benefit of the Town and its citizens, and the Town is willing to pay for the Supplemental Water for the benefit of the Town and its citizens.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.**

- a. **Agreement.** “Agreement” shall mean and refer to this Water Supply Agreement between the Parties.

- b. **Commodity Costs.** “Commodity Costs” shall mean and refer to the District’s per acre-foot cost for raw SWP water delivered by MWA to the District in force at the time of delivery of the Supplemental Water, as those costs may change from time to time.
- c. **District.** “District” shall mean and refer to Hi-Desert Water District, a public entity.
- d. **Domestic Water Service.** “Domestic Water Service” shall mean and refer to water delivered by the District to the Town that is of a quality suitable for potable or other household uses.
- e. **Effective Date.** “Effective Date” shall mean and refer to the date on which this Agreement is fully executed by the Parties.
- f. **Irrigation Water Service.** “Irrigation Water Service” shall mean and refer to water delivered by the District to the Town for the irrigating the Town Parks.
- g. **Ordinary Use and Demand.** “Ordinary Use and Demand” shall mean and refer to a verifiable quantity of water used by the Town at the Town Parks over any given period of twelve months.
- h. **Operational Costs.** “Operational Costs” shall mean and refer to the District’s per acre-foot cost associated with making such water available to the Town Parks in force at the time of delivery of the Supplemental Water, as those operational costs may change from time to time. Such operational costs shall be identified in the District’s Annual Adopted Budget as budgeted total operations cost divided by the budgeted commodity sales, in acre feet to arrive at an operational cost per acre foot.
- i. **Parties.** “Parties” shall mean and refer to the District and the Town.
- j. **Recycled Water.** “Recycled Water” shall mean and refer to water that may become available for sale by the District, whether through its Wastewater Treatment and Water Reclamation Project, or otherwise.
- k. **Supplemental Water.** “Supplemental Water” shall mean and refer to the water provided by the District to the Town under this Agreement.
- l. **Supplemental Water Balance.** “Supplemental Water Balance” shall mean and refer to the amount of money reflecting the remaining balance of the

Town Payment, as defined in Section 4(a), below, excluding interest, as adjusted on an ongoing basis to reflect Supplemental Water deliveries made by the District to the Town pursuant to this Agreement. This balance does not and will not accrue any interest for the benefit of the Town.

- m. Town Parks.** “Town Parks” shall mean and refer to park land located within the boundaries of the District and within the boundaries of the Town which is owned or controlled by the Town, or leased by or to the Town.
- n. Town.** “Town” shall mean and refer to the Town of Yucca Valley, a public entity.
- o. Total Costs.** “Total Costs” shall mean and refer to the sum of the District’s Commodity Costs and Operational Costs, which are currently estimated at one thousand two hundred fourteen dollars (\$1,214) per acre-foot.
- p. Water Delivery System.** “Water Delivery System” shall mean and refer to the infrastructure that is utilized by the District to deliver Supplemental Water to the Town Parks, and for which the District undertakes sole responsibility to operate and maintain, and which the Town does not own, control, or maintain.
- q. Water Shortage.** “Water Shortage” shall mean and refer to: (i) an extended period of months or years when a region sustains a deficiency in its water supply whether surface or underground water, which may occur when a region receives consistently below average precipitation, or which may be established by a declaration of drought from an authorized representative of a State, County, or local entity for that region, including the District; (ii) a state of emergency as declared by an authorized representative of a State, County, or local entity for that region; or (iii) for reasons of force majeure as set forth in Section 6, below.

2. **Purpose.** The Purpose of this Agreement is to formalize the terms and conditions by which the District will provide Supplemental Water to the Town for irrigation use on Town Parks, beginning on the Effective Date and continuing thereafter for as long as this Agreement remains in effect.

3. Term of Agreement.

(a) **Contract Term.** The term (“Term”) of the Agreement shall commence on the Effective Date and terminate when the Supplemental Water Balance discussed in Section 4(a), below, reaches zero, unless otherwise agreed to in writing by the Parties by way of an amendment to this Agreement or a separate agreement.

(b) **Delivery Year.** The first Supplemental Water delivery year shall commence on the Effective Date and continue until June 30, 2013. Subsequent delivery years shall begin on July 1 and end on June 30 of the following year. If the Supplemental Water Balance reaches zero before the end of a particular delivery year, the District shall not be obligated to continue delivering Supplemental Water pursuant to the terms of this Agreement for the remainder of such delivery year unless the parties so agree in writing at least sixty (60) days in advance of the end of the Term.

4. Funding for Supplemental Water.

(a) **Town Payment.** The Town agrees to pay to the District within ninety (90) days of the Effective Date of this Agreement a total of four hundred thousand dollars (\$400,000) (“Town Payment”) for the purpose of pre-paying for the Total Costs of Supplemental Water to be delivered to Town Parks until such time as the Supplemental Water Balance reaches zero. The District shall be under no obligation under this Agreement until the Town Payment is paid in full by the Town to the District. The District’s invoicing against the Supplemental Water Balance for deliveries of Supplemental Water to Town Parks shall be administered according to the methodology set forth in Section 4(b), below.

(b) **Cost of Delivered Water.** The District will invoice the Town for the Commodity Costs associated with acquiring the Supplemental Water as well as the Operational Costs associated with delivering the Supplemental Water to the Town Parks. For each acre foot of water delivered to Town Parks under this Agreement, the District will invoice against the Town’s Supplemental Water Balance the Commodity Costs; as such Commodity Cost may change from time to time, plus the District’s Operational Costs.

It is understood that at the time of the drafting of this agreement, the District is in the advance planning stages for the completion of a regional Wastewater Treatment and Water Reclamation Project. Should the completion of this recycling project result in a commodity source for water, the parties agree to meet and confer as to whether this Agreement will need to be modified to accommodate such change.

(c) **Invoicing.** The District will regularly calculate the accrued Total Costs for delivery of Supplemental Water to the Town Parks and the District will quarterly provide the Town with an invoice describing the Total Costs accrued during the prior three-month period as well as the remaining Supplemental Water Balance. The District will continue to deliver Supplemental Water for Irrigation Water Service to the Town Parks under this Agreement until the Supplemental Water Balance is fully exhausted. The District shall be entitled to retain and use for any lawful purpose, in its discretion, any interest that may be generated by the Supplemental Water Balance. The Town shall be entitled to request from the District, and upon such request, the District shall provide further explanation and documentation supporting the invoice. Should the Town disagree with the District's Total Costs, the parties shall resolve the matter in accordance with Section 18 of this agreement.

(d) **Additions to Supplemental Water Balance.** If the Town desires to make additional contributions to the supplemental water account in the future, the Parties agree to meet to discuss that possibility at that time.

5. **Delivery of Supplemental Water.** The District shall make delivery of Supplemental Water for the Town Parks through the District's Water Delivery System according to the Town's Ordinary Use and Demand. The District has the right to deliver Supplemental Water to the Town Parks from any District water source. Delivery of Supplemental Water to the Town shall be subject to all other conditions related to District water service embodied in the District's Rules and Regulations, in pertinent laws and regulations, and elsewhere. This Agreement does not guarantee any particular level of water service from the District to the Town, however, the District shall exercise ordinary care customary for water delivery service.

6. **Force Majeure.** If by reason of acts of God, earthquakes, droughts, floods,

storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state, or local law, order, rule, or regulation, the District is prevented, in whole or in part, from delivering Supplemental Water to the Town, as provided herein, then the District may reduce delivery of Supplemental Water to the Town up to the same percentage the District reduces water delivery to its retail customers.

7. **Suspension.** The delivery of Supplemental Water may be suspended or curtailed during any period of public emergency or disaster as well as during any other period of Water Shortage.

8. **Water Quality.** The District shall be responsible for ensuring that the quality of the Supplemental Water made available for delivery to the Town is of the same pressure and quality of water that the District delivers to its other irrigation customers. Should recycled water become available to the District, whether through its Wastewater Treatment and Water Reclamation Project or otherwise, the District shall attempt to make this water available as Supplemental Water given that utilizing recycled water for Irrigation Water Service at the Town Parks is in furtherance of applying such water to reasonable and beneficial uses while allowing higher quality water to be applied for domestic uses.

9. **No Remarketing of Supplemental Water.** The Town is prohibited from remarketing, reselling, redistributing or redelivering the Supplemental Water to any other person or entity, within or outside the District's service area. The District's obligations under this Agreement are solely with the Town and no third party shall have the right to enforce the terms of this Agreement as a third party-beneficiary. The Town agrees to abide by the District's Rules and Regulations to the extent such rules are not in conflict with the explicit terms of this Agreement.

10. **Service Area Integrity.** Nothing in this Agreement is intended nor shall it be interpreted to waive the right of the District to provide water service to current or future areas within or adjacent to its existing service area.

11. **Representations or Warranties of the District.** The District makes the following representations, warranties, and covenants to the Town:

(a) **Power and Authority to Execute and Perform this Agreement.** The District has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of the District, and is enforceable against the District in accordance with its terms.

12. **Representations or Warranties of Town.** The Town makes the following representations, warranties and covenants to the District:

(a) **Power and Authority to Execute and Perform this Agreement.** The Town has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of the Town, enforceable against Town in accordance with its terms.

13. **Default and Termination.** In the event the either Party fails to perform any obligation otherwise required by this Agreement, either Party shall demand in writing that the other Party cure such non-performance. The responding Party shall have thirty (30) days after receipt of such demand to cure. In the event the responding Party fails to cure a default within the thirty (30) day period, Supplemental Water delivery may be suspended and such water redirected to other uses for the duration of the suspension upon thirty (30) days written notice from the District to the Town, and if such suspension occurs, the Supplemental Water Balance shall be returned to the Town within thirty (30) days from the date of the District's written notice.

14. **Expiration of Term.** This Agreement shall terminate and be of no further force and effect as of the expiration of the Term, unless otherwise agreed to in writing by the Parties at least sixty (60) days in advance of when the Supplemental Water Balance reaches zero.

15. **Indemnity.** The District, its successors and assigns, shall hold harmless, defend and indemnify the Town, its officials, employees, agents, successors and assigns (all of which are herein referred to as the “Town Indemnified Parties”) from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, at law or in equity, costs and expenses, including but not limited to reasonable attorneys’ fees (collectively, “Damages”), which may be imposed on, incurred by, or asserted against Town Indemnified Parties as a result of: (i) a breach of the District’s obligations under this Agreement; (ii) the conduct of the District’s operations at Town Parks, including without limitation, all maintenance, repair, and operations of the Water Delivery System located in the Town and at the Town Parks ; or (iii) any other conduct of the District related to the subject of this Agreement.

The Town, its successors and assigns, shall hold harmless, defend and indemnify the District, its officials, employees, agents, successors and assigns (all of which are herein referred to as the “District Indemnified Parties”) from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, at law or in equity, costs and expenses, including but not limited to reasonable attorneys’ fees (collectively, “Damages”), which may be imposed on, incurred by, or asserted against District Indemnified Parties as a result of: (i) a breach of the Town’s obligations under this Agreement; (ii) the conduct of the Town’s operations at Town Parks, excluding any purported Damages arising from the District’s Water Delivery System including sprinklers and related irrigation devices at Town Parks; or (iii) any other conduct of the Town related to the subject of this Agreement.

16. **Third Party Claims.** Promptly following notice of any third-party claim for purported Damages as set forth in Section 15, above, for which the Town or District is indemnified hereunder, as the case may be, the Indemnitor is the Party obligated to indemnify the other party, referred to herein as the Indemnatee, and the Indemnitor shall notify the Indemnatee of such claim in writing. The Indemnitor shall have a period of thirty (30) days following the receipt of such notice to notify the Indemnatee of whether the Indemnitor elects to

assume the defense thereof. If the Indemnitor so notifies the Indemnitee that it elects to assume the defense, the Indemnitor thereafter shall undertake and diligently pursue the defense of the third-party claim. The Indemnitor shall not consent to entry of judgment or enter into any settlement agreement, without the consent of the Indemnitee, which does not include a complete and unconditional release of the Indemnitee or which imposes injunctive or other equitable relief against the Indemnitee. The Indemnitee shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If the Indemnitor does not give the requisite notice, or fails to assume and diligently pursue the defense of such third-party claim, the Indemnitee may defend against such third-party claim in such manner as it may deem appropriate, at the Indemnitor's expense, including without limitation settlement thereof on such terms as the Indemnitee may deem appropriate, and to pursue such remedies as may be available to the Indemnitee against the Indemnitor. Notwithstanding the foregoing, the Indemnitee shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of the Indemnitor, which does not include a complete and unconditional release of the Indemnitor.

17. **Notice of Claims.** The Parties shall promptly notify each other within ten (10) days of the District or the Town becoming aware of: (1) any claims or suits brought against the District or Town which involves this Agreement or Supplemental Water supplied to the Town pursuant to this Agreement, (2) any third-party claims, and (3) any force majeure event as set forth in Section 6, above. Any such notice shall conform to the requirements specified in Section 24 of this Agreement.

18. **Meet and Confer.** If any dispute arises between the District and the Town regarding any matter related to this Agreement, either Party may request a meeting to be held on the applicable issues. Unless otherwise agreed by the Party representatives involved, such meeting shall be held within fourteen (14) days of the initial request for such meeting.

19. **Remedies Not Exclusive.** Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

20. **No Transfer of Rights.** The District's delivery of Supplemental Water to the Town under this Agreement shall not at any time constitute or be interpreted as a sale, transfer, or assignment of any of the District's water rights, nor shall any delivery of Supplemental Water to the Town at any time constitute the acquisition of any other water right by the Town.

21. **Subject to Applicable Law.** The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing public agencies as they now exist and as they may be amended or codified by the Legislature of the State of California.

22. **Entire Agreement.** This Agreement contains the entire understanding between the Town and District with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Town and District. This Agreement cannot be amended except in writing signed by both Parties.

23. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

24. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

25. **Headings; Section References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for the ease and convenience; they shall not be

deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

26. **Separability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

27. **Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. The Town shall have the right to assign its rights under this Agreement to any successor entity to the Town with the written consent of the District, provided, however, that the District shall not unreasonably withhold such consent and further provided that the successor/assignee agrees to be bound by all of the obligations of the Town set forth herein. Notwithstanding the foregoing, no assignment permitted hereunder shall permit the delivery of Supplemental Water to any property or development other than to Town Parks without the written consent of the District, in its sole and absolute discretion.

28. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this agreement shall be in a court of competent jurisdiction in the county of San Bernardino, California, and consent to the jurisdiction thereof.

IN WITNESS WHEREOF, the Parties have entered this Agreement as of the Effective Date.

DISTRICT:

Hi-Desert Water District,
a public agency

TOWN:

Town of Yucca Valley,
a public agency

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

55439 29 Palms Hwy.
Yucca Valley, CA 92284
Attn: General Manager
Phone: 760-365-8333
Fax: 760-365-8673

57090 29 Palms Hwy
Yucca Valley, CA 92284
Attn: Town Manager
Phone: (760) 369-7207
Fax: (760) 369-0626

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane Stueckle, Deputy Town Manager
Date: February 1, 2013
For Council Meeting: February 5, 2013

Subject: Declaring Certain Town Property as Surplus
Authorization to Dispose of Surplus Property

Prior Council Review: None

Recommendation: That the Town Council declares the attached list of property as surplus, and approve the sale of surplus supplies and equipment at an in-house public auction.

Summary: From time to time it becomes necessary to purge unused supplies and equipment. The Town exercised this option in May, 2010 and has since accumulated more surplus items to exercise it again.

Staff obtains Town Council declaration of surplus property prior to disposal. Staff will schedule and hold an auction in approximately April or May for disposal of the property.

Order of Procedure:

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

Discussion: From time to time it becomes necessary to purge unused supplies and equipment. The attached listing identifies the equipment and supplies to be auctioned.

The items include a range of supplies and equipment from 30 year old vehicles that are no longer in use to office furniture, electronic equipment which is outdated or no longer functioning.

Alternatives: Staff recommends no alternative action. The items are no longer useful to Town operations.

Reviewed By:

[Signature]
Town Manager

[Signature]
Town Attorney

[Signature]
Mgmt Services

[Signature]
Dept Head

___ Department Report

___ Ordinance Action

___ Resolution Action

___ Public Hearing

___ Consent

___ Minute Action

___ Receive and File

___ Study Session

Fiscal impact: All items on the schedule have been fully depreciated and the remaining book value for each item is zero. The estimated salvage value of the items recommended for surplus sale is \$6,000 – \$16,000, and will be recorded as a gain on sale of assets.

Attachments: List of Surplus Equipment.

AUCTION ITEMS

ITEM NUMBER	UNIT #	ITEM	VIN	DEPARTMENT	ESTIMATED VALUE	NOTES
2	44	1995 Chevy Cheyenne 2500 Animal Control wagon	1GBGK24K5SE185642	Animal Control	\$ 1000 - 2500	
3	57	1981 International-Harvester S-1800 water truck	1HTAA18E1BHA29136	Fleet	\$ 1000 - 2500	
4	59	1982 International-Harvester 4 yard dump truck with conveyer & plow	1HTAA1958DHB14096	Fleet	\$ 1000 - 2500	
5	75	2001Chevy Animal Control Wagon	1GBHK24U11E243511	Animal Control	\$ 2000 - 6000	
6		Craftsman shop vac 5 HP.		Public Works	\$ 5.00 - 20.00	
7		Black desk 6-drawer		Storage	\$5.00	
8		Shower insert 60"X35" 2-seat		Storage	\$ 20.00 - 50.00	
9		Singer sewing machine with desk		Storage	\$25	
10		Bearcat hot air lance model# TRH-80766 with hoses		Street Maintenance	\$ 5.00 - 50.00	
11		Stihl blower model BG85C		Street Maintenance	\$5-\$25	
12		Stihl chainsaw model MS270C		Street Maintenance	\$5-\$25	
13		1993 1000lb. Graffiti Trailer	LCAUS0415PT244641	Code Compliance	\$50-\$100	
16		Pool cover reel		Park Maintenance	\$40.00	
17	53	1994 Ingersol-Rand P100DWD Compressor	246711UEE198	Street Maintenance	\$100 - 500	
18		(15) 8' Tables (from County Days)		Community Services	\$15	
19		(6) 4 x 8 Risers		Community Services	\$30	
20		(1) 3 x 6 Riser		Community Services	\$5	
21		(1) Riser Dolly		Community Services	\$5	
22		(8) 4' Shoplights Fluorescent fixtures with black light bulbs		Community Services	\$8	
23		(1) Limbo Kit		Community Services	\$1	
24		(2)Quick Snap Banner Holders		Community Services	\$2	
25		(2 Pairs Buddy Walkers		Community Services	\$2	
26		(2) Skyline Portable Display panel kits		Community Services	\$50	
27		(1) Kodak slide projector with 4 carousels		Community Services	\$10	
28		(1) Kyocera fax machine with stand		Community Services	\$20	
29		(1) San Bernardino Banner		Community Services	\$1	
30		(1) United Manu. Scoreboard		Community Services	\$1	
31		(1) RCA 5 disk CD changer		Community Services	\$5	
32		(7) Putters		Community Services	\$7	
33		(5) Misc. Archery Bows		Community Services	\$5	
34		(1) Avery -Dennison Desktop Binder		Community Services	\$10	
35		(1) David Mueller signed frame print		Community Services	\$1	
36		(1) Memorex VHS Camcorder with case		Community Services	\$5	
37		(1) 10 mic. Mixer and amp. With 2 Optimas Speakers		Community Services	\$20	
38		(1) Polaroid one step camera in box		Community Services	\$1	
39		(2) Cannon Sure Shot 35mm Cameras		Community Services	\$5	
40		(1) Canon EOS Rebel x 35mm Camera w/2 lens' and case		Community Services	\$20	
41		Amcor Portable 110v air conditioners		Community Services	\$225	
42	45	Chevy Lumina Van		Community Services	\$500	
43		(1) Popcorn Machine		Community Services	\$10	
44		(1) Cotton Candy Machine		Community Services	\$10	
45		Van rear A/C unit - Paid \$1200		Community Services	\$500	
46		Wurlitzer Upright Piano		Community Services	\$100	
47		Ecosys Copy Machine		Community Services	\$100	



TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council

From: Curtis Yakimow, Director of Administrative Services
Sharon Cisneros, Senior Accountant

Date: January 30, 2013

For Council Meeting: February 5, 2013

Subject: Treasurer's Report for the Quarter Ending December 31, 2012

Recommendation: Receive and file the Treasurer's Report for the second quarter of FY 2012-13.

Order of Procedure:

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

Discussion: The investment policy and Town Code of the Town of Yucca Valley requires that quarterly Treasurer's reports be filed with the Town Council. Effective January 1, 2010, State law no longer requires nor provides for submission of any such quarterly investment report to the California Debt and Investment Advisory Commission (CDIAC). The attached Treasurer's Report is for the 2nd Quarter of FY 2012-13.

Attachments: Treasurer's report 2nd quarter FY2012-13

Reviewed By:


Town Manager


Town Attorney


Admin Services


Finance

Department Report
 Consent

Ordinance Action
 Minute Action

Resolution Action
 Receive and File


Public Hearing
 Study Session

Town of Yucca Valley
Treasurer's Report
As of December 31, 2012

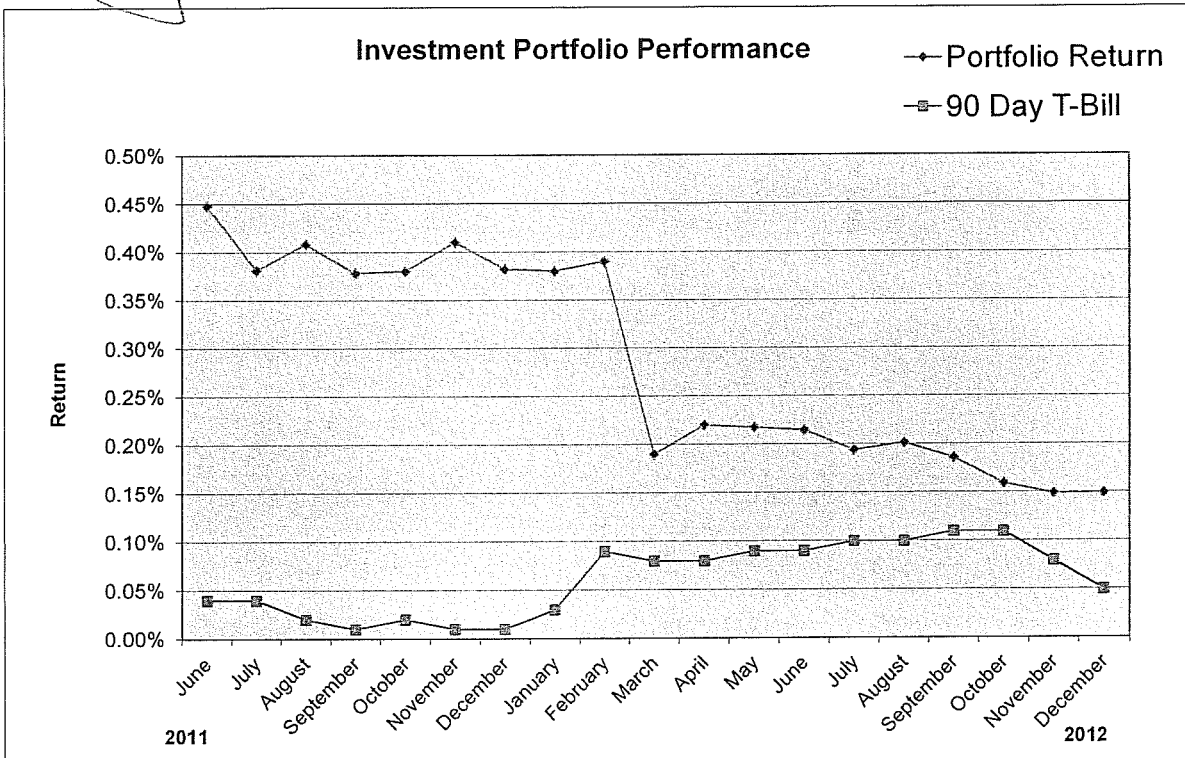
Institution/Investment	Market Value	Percent of Portfolio	Yield	Maturity Date
Pacific Western-Checking Acct	\$ 1,687,175	9.10%	0.00%	Liquid
Local Agency Investment Fund (LAIF)	8,396,949	45.29%	0.32%	Liquid
Pac Western-Successor Agency	8,454,476	45.60%	0.00%	Liquid
Petty Cash	3,600	0.02%	0.00%	Liquid
Total Cash & Investments	\$ 18,542,200	100.00%	0.14%	Fully Liquid

* Note - Drop in Yield in March 2012 reflective of movement of RDA monies to separate bank account.

I certify that to the best of my knowledge, this report accurately reflects all pooled investments, and is in conformity with the Town's investment policy effective February 2010, which complies with the California Government Code. A copy of this investment policy, along with the supporting banking and investment statements, is available in the office of the Town Clerk. This investment program provides sufficient cash flow liquidity to meet the next six months of budgeted expenditures.



Curtis Yakimow
Administrative Services Director



TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Administrative Services Director
Date: January 31, 2013
For Council Meeting: February 5, 2013

Subject: Warrant Register: February 5, 2013

Recommendation:

Ratify the Warrant Register total of \$ 273,179.26 for checks dated January 24, 2013. Ratify the Payroll Register total of \$ 152,026.90 for checks dated January 18, 2013.

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. 30 dated January 18, 2013 total of \$ 152,026.90
Warrant Register No. 35 dated January 24, 2013 total of \$ 273,179.26

Reviewed By:



Town Manager



Admin. Services



Town Attorney



Finance

Department Report
 Consent

Ordinance Action
 Minute Action

Resolution Action
 Receive and File

Public Hearing
 Study Session

TOWN OF YUCCA VALLEY
PAYROLL REGISTER # 30
CHECK DATE - January 18, 2013

Fund Distribution Breakdown

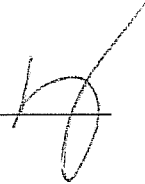
Fund Distribution

General Fund	\$134,433.01
Gas Tax Fund	11,038.43
Successor Agency	6,555.46 **
	<hr/>


Grand Total Payroll	\$152,026.90
	<hr/> <hr/>

****This is not an obligation of the Town of Yucca Valley.**

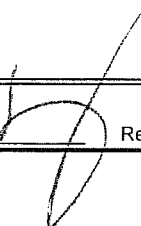
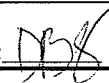
Prepared by P/R & Financial Specialist:



Reviewed by H/R & Risk Mgr.:



Town of Yucca Valley
Payroll Net Pay & Net Liability Breakdown
 Pay Period 30 - Paid 01/18/2013
 (December 29, 2012 - January 11, 2013)
 Checks: 4591 - 4599

	Employee	Employer	Total
<u>Net Employee Pay</u>			
Payroll Checks	\$2,887.43		\$2,887.43
Direct Deposit	74,890.82	-	74,890.82
Sub-total	77,778.25		77,778.25
<u>Employee Tax Withholding</u>			
Federal	13,075.76		13,075.76
Medicare	1,486.64	1,486.63	2,973.27
SDI - EE	-	-	-
State	4,024.43		4,024.43
Sub-total	18,586.83	1,486.63	20,073.46
<u>Employee Benefit & Other Withholding</u>			
Health Benefit Account Credit	-	-	-
Deferred Compensation	3,161.65	2,442.41	5,604.06
PERS Survivor Benefit	51.00		51.00
Health Caf� Plan	2,520.13	13,662.22	16,182.35
American Fidelity Pre-Tax	148.86		148.86
American Fidelity After-Tax	97.40		97.40
American Fidelity-FSA	686.19		686.19
PERS EE - Contribution 7%	1,050.32		1,050.32
PERS EE - Contribution 8%	6,509.73		6,509.73
PERS Retirement - Employer	-	1,177.28	1,177.28
PERS Retirement - Employer	-	15,123.74	15,123.74
Wage Garnishment - Employee	408.56		408.56
Life & Disability Insurance		1,163.91	1,163.91
Unemployment Insurance		1,817.51	1,817.51
Workers' Compensation		4,154.28	4,154.28
Sub-total	14,633.84	39,541.35	54,175.19
Gross Payroll	\$110,998.92	\$41,027.98	\$152,026.90
Prepared by P/R & Financial Specialist:  Reviewed by H/R & Risk Mgr.: 			

WARRANT REGISTER # 35
CHECK DATE JANUARY 24, 2013




FUND DISTRIBUTION BREAKDOWN

Checks # 42019 - # 42103 are valid

GENERAL FUND # 001	\$131,824.07
CENTRAL SUPPLIES FUND # 100	\$543.33
CUP DEPOSITS FUND # 200	\$17,964.67
TRAFFIC SAFETY FUND # 507	\$20,720.00
AB928-STATE CONSTRUCTION GRANT FUND # 513	\$16,110.99
STREET MAINTENANCE FUND # 515	\$5,905.65
LTF FUND # 516	\$4,600.00
MEASURE I 2010-2040 FUND # 524	\$61,834.55
CAPITAL PROJECTS RESERVE FUND # 800	\$13,676.00

GRAND TOTAL

\$273,179.26

Prepared by Shirlene Doten, Accounting Technician,  Reviewed by Sharon Cisneros, Senior Accountant 
Approved by Curtis Yakimow, Administrative Services Director 

Town of Yucca Valley
Warrant Register
January 24, 2013

Fund	Check #	Vendor	Description	Amount
001		GENERAL FUND		
	42022	American Planning Association	Membership Dues	\$388.00
	42023	Alsco/American Linen, Inc.	Facilities Supplies & Uniforms	131.17
	42025	ASCAP	Annual License Fee	327.00
	42026	Avalon Urgent Care	Medical Services	200.00
	42027	Jeffery Bishop	Recreation Program Refund	58.00
	42028	Jeff Brady	Sports Referee	12.00
	42029	Dennis Cavins	Sports Referee	36.00
	42030	CESA-SC	Membership Renewal	75.00
	42031	Charles Abbott & Assoc, Inc.	Plan Check Services	5,221.10
	42032	Sharon Cisneros	Training Seminar Expense	791.71
	42033	Companion Animal Clinic	Veterinary Services	507.00
	42036	CPRS - Calif Park & Rec Soc	Membership Renewal	480.00
	42038	D & D Disposal, Inc.	Shelter Animal Disposal Svs.	5,340.00
	42039	Americo Demeo	Sports Referee	90.00
	42040	League of CA Cities Desert Mountain	2013 Membership Dues	500.00
	42041	Desert Medical Group	Facility Rental Refund	200.00
	42042	Desert Pacific Exterminators	Exterminator Services	251.00
	42043	Desert Sun Publishing	12/12 Radio Access	1,997.40
	42044	DFM Associates	2013 Election Code	53.75
	42045	Desert Hot Springs Animal Clinic	Veterinary Professional Svs.	433.00
	42046	Dept of Justice	Livescan Services	164.00
	42047	Employment Development Dept.	Unemployment Ins. Assessment	3,178.31
	42048	Ed Escalante	Sports Referee	90.00
	42049	Farmer Bros. Co.	Office Supplies	188.69
	42051	FedEx	Delivery Service	19.36
	42052	Fred's Tires	Fleet Tire Services	475.98
	42053	Fulton Distributing Co.	Maintenance Supplies	1,429.50
	42054	G & K Propane	Shelter Propane	567.17
	42055	Jess Geeson	Sports Referee	30.00
	42056	Harrison Air Conditioning	Facilities Maintenance	520.70
	42057	Totalfunds by Hasler	Postage	400.00
	42058	Hi-Desert Glass	Facilities Maintenance	541.97
	42059	Hi-Desert Water	Water Service	725.17
	42060	Hi-Desert Publishing	Museum Advertising	421.50
	42062	Honeywell	Facilities Maintenance	319.04
	42065	Deborah S. Mallants	Temporary Employment Svs.	1,819.58
	42066	Justin Mc Gowan	Sports Referee	90.00
	42067	Melissa Mc Pheeters	Museum Event Assistant	100.00
	42068	Mojave Desert & Mtn. Integ. Wst JPA	JPA Contribution FY 12/13	5,253.00
	42069	Morongo Unified School District	Fleet Fuel Expense	6,068.39
	42071	Oasis Office Supply	Office Supplies	123.49
	42072	OnTrac	Delivery Service	8.94
	42075	Public Agency Retirement Services	11/12 Trust Administrator Svs.	300.00
	42076	Nancy L. Prieto	Facility Rental Refund	200.00
	42078	Rainshadow Irrigation Consulting Co	Irrigation System Analysis	1,750.00
	42079	SBCO-Office of the Assessor	Assessor Disk	429.43
	42080	Office of the County Recorder	Filing Fee	144.00
	42081	SCE	Electric Service	7,163.88

Town of Yucca Valley

Warrant Register

January 24, 2013

Fund	Check #	Vendor	Description	Amount
	42084	Smith Pipe & Supply, Inc.	Parks Irrigation Supplies	388.46
	42085	So. Cal. Gas Co.	Natural Gas Vehicle Fuel	13.00
	42086	Southwest Networks, Inc.	Network Routers	28,451.19
	42087	Sprint	Phone Service	3.42
	42088	Stater Bros	Museum Event Supplies	307.31
	42089	The Planning Center	General Plan Update Svs.	41,798.44
	42090	Trophy Express	Employee Name Badge	12.15
	42091	Unisource Worldwide, Inc.	Maintenance Supplies	2,125.23
	42092	VCA Yucca Valley Animal Hospital	Veterinary Services	630.00
	42093	Verizon	Business Center Drive T1 line	550.61
	42094	Valley Independent	Printing Expense	1,338.14
	42095	Voyager Fleet Systems, Inc	Natural Gas Vehicle Fuel	125.17
	42096	Walmart Community	Shelter Pet Food	1,649.73
	42097	West Tech Refrigeration	Facilities Maintenance	475.38
	42100	Woods Auto Repair	Fleet Vehicle Repair & Smog Sv	52.00
	42101	Yucca Valley Quick Lube	Fleet Maintenance	222.34
	42102	YV Chamber of Commerce	Joint Marketing	410.00
	EFT	The Home Depot	Facilities Maintenance	845.59
	EFT	First Bankcard	Meetings & Operating Supplies	2,811.68
Total 001	GENERAL FUND			<u>\$131,824.07</u>
100 INTERNAL SERVICE FUND				
	42064	Mail Finance	Town Hall Postage Meter Lease	\$543.33
Total 100	INTERNAL SERVICE FUND			<u>\$543.33</u>
200 DEPOSITS FUND				
	42024	Architectonix, Inc.	Deposit Account Refund	\$131.40
	42034	Corporation of the Presiding Bishop	Deposit Account Refund	3,710.58
	42050	Fast Building Systems, LLC	Deposit Account Refund	5,715.32
	42061	Hi Desert Water District	Deposit Account Refund	202.50
	42070	NRO Engineering	Engineering Services	460.00
	42074	Pacific Alliance Dev Group	Deposit Account Refund	1,834.37
	42080	Office of the County Recorder	Recording Fee	27.00
	42082	Schoeppner Shows	Special License Refund	4,920.00
	42083	Elsa Segerer Family Trust	Deposit Account Refund	138.50
	42103	Yucca Valley Estates, LLC	Deposit Account Refund	825.00
Total 200	DEPOSITS FUND			<u>\$17,964.67</u>
507 TRAFFIC SAFETY FUND				
	42021	Albert Grover & Assoc.	Dumosa/SR 62 Signalization	\$20,720.00
Total 507	TRAFFIC SAFETY FUND			<u>\$20,720.00</u>
513 AB2928-STATE CONSTRUCTION GRANT FUND				
	42073	Overland Pacific & Cutler, Inc.	TCRP SR 62 La Honda/Dumosa	\$13,965.50
	42099	Willdan Associates	TCRP Project	2,145.49
Total 513	AB2928-STATE CONSTRUCTION GRANT FUND			<u>\$16,110.99</u>

Town of Yucca Valley
Warrant Register
January 24, 2013

Fund	Check #	Vendor	Description	Amount
515 GAS TAX FUND				
	42019	A Cone Zone, Inc.	Street Name Signage	\$2,223.46
	42020	Ace Alternators	Streets Equipment Maintenance	250.45
	42023	AlSCO/American Linen, Inc.	Streets Uniform Service	52.70
	42037	Crafco, Inc.	Asphalt Supplies	2,773.44
	42059	Hi-Desert Water	Water Service	138.16
	42081	SCE	Electric Service	467.44
Total 515	GAS TAX FUND			\$5,905.65
516 LTF FUND				
	42070	NRO Engineering	Engineering Services	\$4,600.00
Total 516	LTF FUND			\$4,600.00
524 MEASURE I - 2010-2040 FUND				
	42035	Counts Unlimited	Annual Census Count Svs.	\$7,675.00
	42081	SCE	Electric Service	539.38
	42098	Western Pavement Solutions, Inc.	12/13 Slurry Seal Project	53,620.17
Total 524	MEASURE I - 2010-2040 FUND			\$61,834.55
800 CAPITAL PROJECTS RESERVE FUND				
	42063	Roza Kazangian	Settlement Proceeds	\$6,000.00
	42077	Joseph S. Putrino	Com Ctr Replumbing Project	7,676.00
Total 800	CAPITAL PROJECTS RESERVE FUND			\$13,676.00
***	Report Total			\$273,179.26

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council

From: Alex Qishta, Project Engineer

Date: January 28, 2013

For Council Meeting: February 5, 2013

Subject: Annexation Area No. 2 (Improvement Area No. 3) (Super Wal-Mart)
APN 0601-201-37 to Community Facilities District No. 11-1 (Services)

Prior Council Review: On June 7, 2011, the Town Council adopted a Resolution approving the goals and policies for the formation of Community Facilities Districts Pursuant to the Mello-Roos Community Facilities Act of 1982. On December 4, 2012, the Town Council approved a Resolution Declaring Its Intention to Annex Territory to Community Facilities District No. 11-1, Annexation Area No. 2, (Improvement Area No. 3) (Services) and Setting a Date and Time for a Public Hearing.

Recommendation: That the Town Council adopts the Resolutions to annex the project into Community Facilities District No. 11-1, Annexation Area No. 2, (Improvement Area No. 3) and levy a special tax thereon to finance certain services as follows, and introduces the Ordinance.

1. A Resolution for the annexation of Annexation Area No. 2, Improvement Area No. 3 to Community Facilities District No. 11-1 (Services), preliminarily establishing an appropriation limit for Improvement Area No. 3, and submitting the levy of the special tax to the qualified electors within the District.
2. A Resolution setting a date for an election on the annexation of Annexation Area No. 2, Improvement Area No. 3, to Community Facilities District No. 11-1 (Services), and setting an appropriation limit.
3. A Resolution declaring results of the special election and directing recording of Notice of Special Tax Lien.
4. An Ordinance of the Town Council of the Town of Yucca Valley, California, authorizing the levy of a special tax within Community Facilities District No. 11-1, Annexation No. 2, Improvement Area No. 3 (Super Wal-Mart).

Executive Summary: The Town has formed Landscape and Lighting Maintenance Districts and Street and Drainage (Benefit) Assessment Districts, as well as Community Facility Districts (CFD's) as a condition of subdivision and other development projects to pay the costs of infrastructure maintenance created by new development.

Reviewed By:


Town Manager


Town Attorney


Mgmt Services

Dept Head

Department Report

Ordinance Action

Resolution Action

Public Hearing

Consent

Minute Action

P. 4 5

Receive and File

Study Session

The CFD is a more flexible approach that allows the Town to recover 100% of the maintenance costs created by the new infrastructure constructed as part of the development project.

The Town Council previously formed CFD 11-1 (Warren Vista Center and Dollar General) pursuant to the Mello-Roos Community Facilities Act of 1982 to provide funding for the maintenance of public improvements.

Order of Procedure: Request Staff Report
Request Public Comment
Council Discussion/Questions of Staff
Motion/Second
Discussion on Motion
Call the Question (Voice Vote)

Discussion: Subdivision and other development projects are approved subject to conditions of approval that require that projects form/annex into a maintenance district. These districts apply an annual fee or special tax upon properties within the District which provides the revenue to offset the cost of maintenance of the public improvements necessary to serve the development.

The public facilities and services proposed to be financed within the territory to be annexed to the District are the following:

- Maintenance of public streets and alleyways, including pavement, traffic control devices, landscaping and other public improvements installed within the public right-of-way;
- Maintenance of all public pedestrian or bicycle pathways within the public right-of-way;
- Public Lighting and appurtenant facilities, including street lights within public right-of-way and traffic signals located at the entrance driveway on Twentynine Palms Highway, the intersection of Twentynine Palms Highway and Avalon Street, the intersection of Twentynine Palms Hwy and Inca Trail, the intersection of Palomar Avenue and Yucca Trail, and the intersection of Joshua Lane and Yucca Trail, which will include all electrical utility charges.
- Town and County costs associated with the setting, levying and collection of the special tax, and in the administration of the District including the contract administration.

If the Maximum Allowable Annual Fee were levied, the revenue generated would be \$14,430 per year.

Alternatives: No alternatives are recommended.

Fiscal impact: The annual revenues generated from the Community Facilities District offset the cost of maintenance of public improvements that serve the development project.

Attachments: Resolution(s) No. 13-
Ordinance No.
Community Facilities District Report

RESOLUTION NO. 13-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA FOR THE ANNEXATION OF IMPROVEMENT AREA NO. 3 TO COMMUNITY FACILITIES DISTRICT NO. 11-1, ANNEXATION AREA #2, IMPROVEMENT AREA #3 (SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE DISTRICT, AND SUBMITTING THE LEVY OF THE SPECIAL TAX TO THE QUALIFIED ELECTORS OF THE AREA TO BE ANNEXED TO THE DISTRICT

WHEREAS, on December 4, 2012, the Town Council adopted Resolution No. 12-45, entitled "Resolution of the Town Council of the Town of Yucca Valley Declaring Its Intention to Annex Territory to Community Facilities District No. 11-1 (Services)" (the District) stating its intent to annex Improvement Area No. 3 to the District under the Mello-Roos Act and to levy a special tax on all property within Improvement Area No. 3 for legally-permitted facilities and services, and directed staff to implement the Act's requirements for annexation of territory to said District;

WHEREAS, the Resolution of Intention included a map of the proposed boundaries of Annexation Area No. 2 (Improvement Area No. 3) to the District, stated the services to be financed, and the rate and method of apportionment of the special tax to be levied within Annexation Area No. 2 (Improvement Area No. 3) of the District to pay the costs, is on file with the Town Clerk, and the provisions thereof are incorporated herein by the reference as if fully set forth, and

WHEREAS, on January 22, 2013, the Town Council held a public hearing on the annexation of Annexation Area No. 2 (Improvement Area No. 3) to Community Facilities District No. 11-1 (Services), and accepted written and documentary testimony and evidence relating thereto; and

WHEREAS, the Town Council now wishes to annex the territory and establish Improvement Area No. 2 in the Community Facilities District as provided herein, and all protests against formation of the proposed district are insufficient to prevent annexation; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Yucca Valley as follows:

SECTION 1. The Town Council hereby affirms the accuracy of the foregoing recitals.

SECTION 2. Pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311, *et seq.*), the Town Council has declared its intent to annex territory to a community facilities district. Pursuant to Section 53321 of the California Government Code, the Town Council hereby determines the following:

- A. The proposed area shall be annexed pursuant to the Mello-Roos Community Facilities Act of 1982 set forth in California Government Code Title 5, Division

2, Part 1, Chapter 2.5;

- B. The Town Council accepts the "Special Tax Report for the Town of Yucca Valley Community Facilities District No.11-1 (Services), Annexation Area No. 2 (Improvement Area No. 3).
- C. The proposed special tax to be levied within Annexation Area No. 2 (Improvement Area No. 3), CFD No. 11-1 (Services) has not been precluded by majority protest pursuant to Section 53324 of the Act.
- D. The annexation area shall be designated "Town of Yucca Valley Community Facilities District No. 11-1, Annexation Area 2 (Improvement Area No. 3)" is hereby established pursuant to the Act.
- E. The boundaries of Annexation Area No. 2 (Improvement Area No. 3) to the District, as set forth in the map of Annexation Area No. 2 (Improvement Area No. 3), CFD No. 11-1 (Services) shall correspond with the boundaries indicated on the map attached hereto as "Exhibit A" as recorded in the San Bernardino County Recorder's Office in Book 601 and Page 20 of Maps of Assessment and Community Facilities Districts.
- F. The name for the proposed area to be annexed to the district is "Community Facilities District No.11-1 (Services), Annexation Area No. 2 (Improvement Area No. 3)";
- G. The public services to be financed by the District shall consist of those items described in the Resolution of Intention and by this reference incorporated herein.
- H. Except where funds are otherwise available, a special tax sufficient to pay for all services, secured by recordation of a continuing lien against all nonexempt real property in Annexation Area No. 2 of the District, will be levied annually within Annexation Area No. 2 (Improvement Area No. 3) of CFD No. 11-1 (Services), and collected in the same manner as ordinary ad valorem property taxes, or in such other manner as the Town Council shall direct. The proposed rate and method of apportionment of the special tax among parcels of real property within the District in sufficient detail to allow each landowner within the proposed District to estimate the probable maximum amount such owner will have to pay, are described in "Exhibit B" attached to the Resolution of Intention and by reference are incorporated herein.
- I. It is hereby found and determined that the Services are necessary to meet the increased demands as the result of development occurring in Annexation Area No. 2 (Improvement Area No. 3) of the District.
- J. The Director of Finance or his/her designee shall be responsible for preparing annually a current roll of the special tax levy obligation by assessor's parcel number and which will be responsible for estimating future special tax levies

pursuant to Government Code Section 53340.2

- K. Upon recordation of the Notice of Special Tax Lien pursuant to Section 3114.5 of the Street and Highways Code, a continuing lien to secure levy of the special tax shall attach to all nonexempt real property in Annexation Area No. 2 (Improvement Area No. 3) of the District and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien is canceled in accordance with law or until collection of the tax by the Town Council ceases.

- L. Pursuant to the provisions of the Act, the proposition of the levy of the special tax and shall be submitted to the qualified electors of the area to be annexed to the District and an election, the time, place and condition of which shall be as specified by a separate resolution of the Town Council.

APPROVED AND ADOPTED on this 5th day of February, 2013.

MAYOR

ATTEST:

TOWN CLERK

Attachments: Resolution No. 12-45
Exhibit A – Boundary Map

RESOLUTION NO.12-45

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY DECLARING ITS INTENTION TO ANNEX TERRITORY TO COMMUNITY FACILITIES DISTRICT NO.11-1 (SERVICES)

WHEREAS, the Town of Yucca Valley, pursuant to Resolution No.11-38 adopted on August 16, 2011, approved the formation of Community Facilities District No. 11-1 (Services) ; and

WHEREAS, the Town requires that a funding mechanism be established for the purpose of funding the long-term maintenance and rehabilitation asphalt pavement, sidewalk, curbs, and other related facilities related to the approval of Conditional Use Permit (CUP) 02-04, and

WHEREAS, in order to accomplish the foregoing, the Town desires to annex territory to be known as Annexation Area No. 2 (Improvement Area No. 3) to Community Facilities District No. 11-1 pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311, *et seq.*), and to levy a special tax on all property within the annexed territory for legally-permitted facilities and services;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Yucca Valley as follows:

SECTION 1. Pursuant to the Mello-Roos Community Facilities Act of 1982 (Gov't Code § 53311, *et seq.*), the Town Council hereby declares its intent to annex Improvement Area No. 3 to Community Facilities District No. 11-1 (Services). Pursuant to Section 53321 of the California Government Code, the Town Council hereby determines the following:

- A. The improvement area shall be annexed pursuant to the Mello-Roos Community Facilities Act of 1982 set forth in California Government Code Title 5, Division 2, Part 1, Chapter 2.5;
- B. The proposed boundaries of Annexation Area No.2 (Improvement Area No. 3) shall correspond with the boundaries indicated on the map attached hereto as "Exhibit A" and incorporated herein by reference;
- C. The public facilities and services proposed to be financed by the District within Improvement Area No. 3 are the following:
 1. Maintenance of public streets and alleyways, including pavement, traffic control devices, landscaping and other public improvements installed within the public rights-of-way;
 2. Maintenance of all public pedestrian or bicycle pathways within the public rights-of-way;

3. Public lighting and appurtenant facilities, including street lights within public rights-of-way and traffic signals located at the entrance driveway on Twentynine Palms Highway, and at the intersection of Twentynine Palms Highway and Avalon Avenue; and
 4. Town and County costs associated with the setting, levying and collection of the special tax, and in the administration of the District including the contract administration.
- D. Except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in the District, will be annually levied within Annexation Area No. 2 (Improvement Area No. 3) ("the area"). The rate, method of apportionment, and manner of collection of the special tax are described in Exhibit B to this Resolution.
- E. The annexation area does not currently contain any parcels used for private residential purposes, and the Council hereby declares that no special tax shall be levied within the District against any parcel that may be subsequently used for private residential purposes;

SECTION 2. The Town Council hereby fixes January 15, 2013 as the date for a public hearing on this resolution, to commence at 6:00 p.m. at the Town of Yucca Valley Town Council Chambers, located at 57090 29 Palms Highway, Yucca Valley, California.

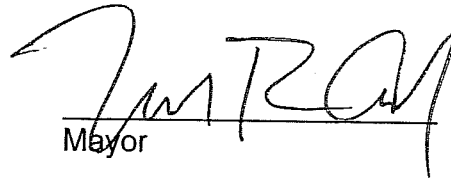
SECTION 3. The Town Manager or his designee is hereby directed to study the need for the formation of the proposed District and, at or before the time of the public hearing on formation of the District, to file a report with the Town Council containing a brief description of the public services which will be required to adequately meet the needs of the Annexation Area No. 2 (Improvement Area No. 3) and an estimate of the cost of providing those services.

SECTION 4. At or prior to the public hearing, protests against the formation of the District may be made orally or in writing by interested persons or taxpayers. Written response should be directed to: Janet M. Anderson, Town Clerk, Town of Yucca Valley, CA.

SECTION 5. The levy of the special tax to be imposed with the District shall be submitted to the qualified electors of the territory to be included within the District pursuant to Section 53326 of the Government Code.

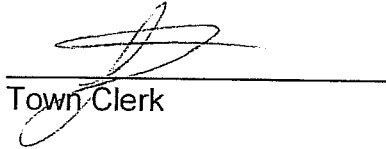
SECTION 6. The Town Council hereby directs the Town Clerk to publish notice of the public hearing on this resolution in the manner required by Section 53322 of the California Government Code; and to provide written notice of said public hearing to all landowners within the proposed District in the manner required by Section 53322.4 of the California Government Code; and to conduct all activities necessary for the election on the levy of special taxes as may be legal and necessary.

APPROVED AND ADOPTED on this 4th day of December, 2012



Mayor

ATTEST:



Town Clerk

Attachments: Exhibit A – Boundary Map Annexation Area No. 2
Exhibit B - Rate and Method of Apportionment of Special Taxes for
Annexation Area No. 2

PROPOSED BOUNDARIES
ANNEXATON NO. 1

(Attached)

NOTE – all parcels located within the proposed annexation boundaries are owned by the following parties:

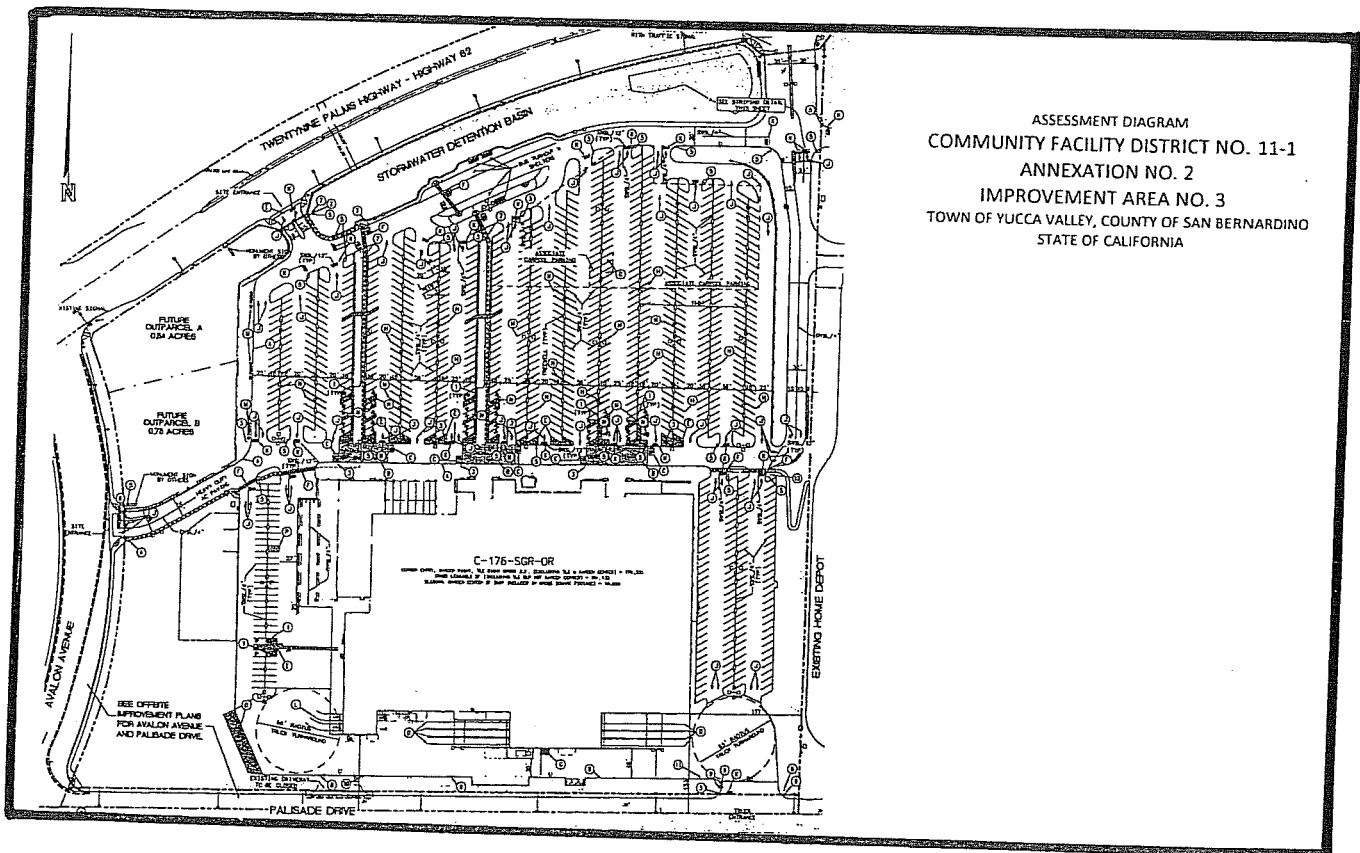
Assessor's Parcel No.

Owner

601-201-37

Wal-Mart Stores, Inc.

TOWN OF YUCCA VALLEY
ANNEXATION AREA NO. 1 (IMPROVEMENT AREA NO. 3)
Community Facilities District No. 11-1 (Services)



RESOLUTION NO. 13-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA SETTING A DATE FOR AN ELECTION ON THE ANNEXATION OF ANNEXATION AREA NO. 2 (IMPROVEMENT AREA NO. 3) TO COMMUNITY FACILITIES DISTRICT NO. 11-1 (SERVICES), SPECIAL TAX LEVY FOR FY 2013/14

WHEREAS, the Town of Yucca Valley established Community Facilities District No. 11-1 (the "District"), on August 2, 2011 pursuant to the Mello-Roos Community Facilities Act of 1982 ("Mello-Roos Act"; Government Code § 53311, *et seq.*): and

WHEREAS, the Town Council of the Town of Yucca Valley (the "Town Council") has previously declared its intention and held and conducted proceedings relating to the annexation of territory as a separate improvement area therein pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982", being Chapter 2.5, Part I Division 2 Title 5 of the Government Code of the State of California, and specifically Article 3.5 thereof (the "Act"). The existing Community Facilities District has been designated as COMMUNITY FACILITIES DISTRICT NO. 11-1 (SERVICES (the "District")); and

WHEREAS, notice of a public hearing relating to the annexation of territory to the existing District, the extent of the territory to be annexed, the furnishing of certain public services, amendments to the rate and method of apportionment of special tax and all other related matters has been given, and a Special Tax Report pertaining to the proposed annexation, as ordered by this Town Council, has been presented and considered; and

WHEREAS, the area proposed to be annexed is known and designated as COMMUNITY FACILITIES DISTRICT NO.11-1 (SERVICES), ANNEXATION NO. 2 (IMPROVEMENT AREA NO. 3) (the "Annexed Territory"); and

WHEREAS, the proposed public services are necessary to meet increased demands placed upon the Town as a result of development and/or rehabilitation occurring in the Annexed Territory; and

WHEREAS, it has now been determined that written protests have not been received by 50% or more of the registered voters residing either within the Annexed Territory or the original District and/or property owners representing more than one-half (1/2) or more of the area of land proposed to be annexed to said District or within the original District; and

WHEREAS inasmuch as there have been less than twelve (12) persons registered to vote within the Annexed Territory for each of the 90 preceding days, this legislative body desires to submit the levy of the required special tax to the landowners of the Annexed Territory, said landowners being the qualified electors as authorized by law: and

WHEREAS, in order to accomplish the Town's desired purpose for the District, the Town must conduct a special election; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Yucca Valley as follows:

SECTION 1. Pursuant to Section s 53326.53353.5 and 53325.7 of the Act, propositions of the levy of the special tax on property within Annexation Area No. 2 (Improvement Area No. 3) of the District shall be submitted to the qualified electorate of Annexation Area No. 2 of the District at an election called thereof as provided below.

SECTION 2. As authorized by the Section 53353.5 of the Act, the ballot measure, the form of which is attached as "Exhibit "A" and by this reference incorporated herein. Said form of ballot is hereby approved.

SECTION 3. The Town Council submits to the qualified voters of the area to be annexed to the District the question of levying a new special tax to finance public facilities and services within Annexation Area No. 2 of the District, as specified in the Resolution of Intent.

SECTION 4. The Town Council hereby calls for a special election to consider the measures described in Section 1 above, which election shall be held on January 22, 2013. Pursuant to Section 53327 of the Act, the election shall be conducted by the use of mailed ballots, or hand delivered ballot pursuant of Section 4000 of the California Election Code. All mail ballots shall be returned to the Town Clerk's office (by mail or personal delivery) no later than 4:00 pm on January 22, 2013, or shall be delivered personally to the Town Clerk no later than the close of the special election on such date.

SECTION 5. In the event that landowners owning all of the property within Annexation Area No. 2 of the District that is subject to the proposed special tax have waived election requirements and/or designated other entities to cast their votes on their behalf, such votes may be cast (verbally or otherwise) at the election by any person or body so designated, and all votes cast shall be counted by the Town Clerk in determining the final vote.

SECTION 6. The Town Clerk is hereby directed to publish in a newspaper of general circulation circulating within the area of CFD No. 11-1 a copy of this Resolution as soon as practicable after the date of adoption of this Resolution.

SECTION 7. In the event that two-thirds or more of the votes cast favor the levying of the special tax, the Town Council may, by resolution, levy the special tax.

APPROVED, PASSED AND ADOPTED this 5th day of February, 2013.

MAYOR

ATTESTED:

TOWN CLERK

EXHIBIT A

**OFFICIAL BALLOT
SPECIAL TAX ELECTION
TOWN OF YUCCA VALLEY
ANNEXATION OF TERRITORY TO
COMMUNITY FACILITIES DISTRICT NO. 11-1 (SERVICES)
(DATE)**

Assessor Parcel Number: _____

Number of votes entitled to cast: 25.41

INSTRUCTIONS TO VOTERS: To vote on the measure, mark an (X) on the line after the word "YES" or after the word "NO." All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

MEASURE SUBMITTED TO QUALIFIED ELECTORS

Ballot Measure: Shall the Town of Yucca Valley be authorized to levy a special tax at the rates and apportioned as described in Exhibit B to the Resolution Declaring its Intention to Annex Territory to Community Facilities District No. 11-1 (Services) adopted by the City Council on _____, 2012 (the "Resolution"), which is incorporated herein by this reference, within the territory identified on the map entitled "Boundary Map of Annexation Area No. 2 (Improvement Area No. 3) Community Facilities District No. 11-1 (Services), Town of Yucca Valley, County of San Bernardino", to finance certain services as set forth in Exhibit B of the Resolution?

YES _____

NO _____

NOTE: This is a special landowner election. You must return this ballot to the Town Clerk of the Town of Yucca Valley either (i) to the Office of the Town Clerk at Town Hall, 57090 Twentynine Palms Highway, Yucca Valley, CA, by 4:00 p.m. on _____, 2012 or (ii) thereafter, to the regular meeting place of the Town Council at Yucca Room, Community Center, Yucca 57090 Twentynine Palms Highway, Yucca Valley, CA on _____, 2012, by five minutes following the adoption of the resolution calling the election (the Town Council meeting convenes at 6:00 p.m. on _____, 2013).

RESOLUTION NO. 13-

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN
OF YUCCA VALLEY, CALIFORNIA, DECLARING
RESULTS OF THE SPECIAL ELECTION AND DIRECTING
RECORDING OF NOTICE OF SPECIAL TAX LIEN**

WHEREAS, on December 4, 2012, the Town Council of the Town of Yucca Valley (the "City") adopted the "Resolution of the Town Council of the Town of Yucca Valley Declaring Its Intent to Annex Territory to Community Facilities District No.11-1 (Services)" (referred to herein as the "Resolution of Intent") stating its intention to annex territory to Community Facilities District No.11-1 and to finance specified public facilities and services, pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311, *et seq.*; the "Mello-Roos Act");

WHEREAS, on January 22, 2013, the Town Council of the Town of Yucca Valley held a public hearing on the Resolution of Intent;

WHEREAS, on January 22, 2013, after the public hearing, the Town Council adopted a "Resolution of the Town Council of the Town of Yucca Valley for the Annexation of Improvement Area No. 3 to Community Facilities District No. 11-1 (Service)(Resolution No. _____; also referred to herein as the "Resolution of Formation"), annexing Annexation Area No. 2 (Improvement Area No. 3) to Community Facilities District No. 11-1 (hereafter, the "District"); and the Town Council also adopted the "Resolution of the Town Council of the Town of Yucca Valley Setting a Date for an Election on the levy of a special tax within Annexation Area No. 2 (Improvement Area No. 3) of Community Facilities District No. 11-1 for January 22, 2013 (Resolution No. _____; also referred to herein as the "Resolution Calling for Special Election");

WHEREAS, on January 22, 2013, an election on the levy of special taxes on parcels within Annexation Area No. 2 (Improvement Area No. 3) of the District was held;

WHEREAS, this Resolution will only take effect if two-thirds of the votes cast in the special election are in favor of the levy, and such results were certified by the Town Council through adoption of the "Resolution of the Town Council of the Town of Yucca Valley Certifying the Results of the Election on the Levy of Special Taxes in Annexation Area No. 2 (Improvement Area No. 3) of Community Facilities District No. 11-1 (Services)" (Resolution No. _____), whereby the levying of special taxes was authorized;

WHEREAS, pursuant to the Resolution of Intent, the Resolution of Formation, and the provisions of the Mello-Roos Act, the maximum rate of special taxes and the manner of apportionment has been determined, and within 15 days of an election resulting in two-thirds of the votes cast in favor of the levy of a special tax in the District, a Notice of Special Tax Lien will be recorded with the San Bernardino County Recorder's Office; and

WHEREAS, pursuant to Government Code Section 53340(a), the Town Council, as legislative body for the District, now wishes to levy the special taxes at the rate, apportionment, and in the manner specified in the above-referenced Resolutions.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Yucca Valley as follows:

SECTION 1. The Town Council hereby affirms the accuracy of the foregoing recitals.

SECTION 2. Pursuant to Government Code Sections 53328, 53340(a), and other provisions and requirements under the Mello-Roos Act, the Town Council hereby levies the special taxes as specified in said Resolutions, and hereby apportions the special taxes in such manner.

SECTION 3. The levy and apportionment of all special taxes hereby shall be consistent with the authorizations provided under the Mello-Roos Act, the Resolution of Intent, and the Resolution of Formation. No levy or apportionment of any special tax not otherwise consistent with said authorities is authorized by this Resolution.

SECTION 4. The Town Council hereby authorizes the Town Manager or his/her designee to implement all necessary steps to cause the special taxes levied hereby to be placed on the San Bernardino County Tax Assessor's secured property tax rolls for the fiscal year commencing July 1, 2013, and continuing each subsequent fiscal year for so long as said special taxes are authorized under the Mello-Roos Act. Furthermore, the Town Council hereby authorizes the Town Manager or his/her designee to cause all such special taxes to be collected, deposited, expended, and otherwise used in a manner consistent with the provisions of the District.

SECTION 5. The Town Council hereby determines that all proceedings for the formation of the District and the levy and apportionment were valid and in conformity with the requirements of the Mello-Roos Community Facilities Act of 1982.

APPROVED AND ADOPTED this 5th day of February, 2013.

MAYOR

ATTEST:

TOWN CLERK

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN IMPROVEMENT AREA 3, ANNEXATION NO 2, OF COMMUNITY FACILITIES DISTRICT NO. 11-1 (SUPER WAL-MART)

WHEREAS, The Town Council of the Town of Yucca Valley has initiated proceedings, held a public hearing, conducted an election and received a favorable vote from the qualified electors authorizing the levy of special taxes within community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982", being Chapter 2.5, Part I, Division 2, Title 5 of the Government Code of the State of California (the "Act"). This Community Facilities District is designated as COMMUNITY FACILITIES DISTRICT NO. 11-1 (the "District").

NOW, THEREFORE THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY DOES ORDAIN AS FOLLOWS:

Section 1. The Town Council does, by passage of this ordinance authorize the levy of special taxes within the District for the 2013-2014 tax year pursuant to the Rate and Method Apportionment of Special Taxes as set forth in Exhibit "A" attached hereto, referenced and so incorporated.

Section 2. The Town Council, is further authorized to annually determine, by Resolution, the special taxes to be levied within the District for the then current tax year or future tax years, except that the special tax to be levied within the District shall no exceed the maximum special tax calculated pursuant to the Rate and Method, but the special tax may be levied at a lower rate.

Section 3. The special taxes herein authorized, to the extent possible, shall be collected in the same manner as ad valorem property taxes and shall be subject to the same penalties, procedure, sale, and lien priority in any case of delinquency as applicable for ad valorem taxes; provided, however, the District may utilize a direct billing procedure for any special taxes that cannot be collected on the County tax roll or my , by resolution, elect to collect the special taxes at a different time or in a different manner if necessary to meet its financial obligations.

Section 4. The special taxes shall be secured by the lien imposed pursuant to Sections 3114.5 and 3115.5 of the Streets and Highways Code of the State of California, which lien shall be a continuing lien and shall secure each levy of the special tax. The lien of the special tax shall continue in force an effect until the special tax obligation is permanently satisfied and canceled in accordance with Section 53344 of the Government Code of the State of California or until the

special tax ceases to be levied by the Town Council in the manner provided in Section 53330.5 of said Government Code.

Section 5. NOTICE OF ADOPTION. Within fifteen (15) days after the adoption hereof, 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 Government Code.

Section 6. EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption.

APPROVED AND ADOPTED by the Town Council and signed by the Mayor and attested by the Town Clerk this _____ day of _____, 2013.

MAYOR

ATTEST:

APPROVED AS TO FORM:

TOWN CLERK

TOWN ATTORNEY

EXHIBIT B
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES
TOWN OF YUCCA VALLEY
COMMUNITY FACILITIES DISTRICT NO. 11-1 (Services)
Annexation No. 2 (Improvement Area No. 3)

Special Taxes shall be levied annually on all Assessor's Parcels in Annexation Area No. 2 (Improvement Area No. 3) located within Community Facilities District No. 11-1(Services) of the Town of Yucca Valley (the "District") commencing in Fiscal Year 2013-14 in an amount determined by the Town through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property in Annexation Area No. 2 (Improvement Area No. 3), unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California, as amended.

"Administrative Expenses" means the actual or estimated costs incurred by the Town as administrator of the District to determine, levy and collect the Special Taxes, including salaries and benefits of Town employees whose duties are directly related to administration of the District and the fees of consultants, legal counsel, the costs of collecting installments of the Special Taxes upon the general tax rolls, preparation of required reports; and any other costs required to administer the District as determined by the Town.

"Annual Escalation Factor" means the greater of the increase in the annual percentage change of the All Urban Consumers Consumer Price Index (CPI) or four percent (4%). The annual CPI used shall be for the San Diego Area as determined by the Bureau of Labor Statistics.

"Approved Property" means an Assessor's Parcel and/or Lot in the District, which has a Final Map recorded prior to March 1st preceding the Fiscal Year in which the Special Tax is being levied, but for which no building permit has been issued prior to the May 1st preceding the Fiscal Year in which the Special Tax is being levied. The term "Approved Property" shall apply only to Assessors' Parcels and/or Lots, which have been subdivided for the purpose of residential development, excluding any Assessor's Parcel that is designated as a remainder parcel determined by final documents and/or maps available to the District Administrator, or Non-Residential Property which has an approved Parcel Map.

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by assessor's parcel number.

"Authorized Services" means those services as described in the "Special Tax Report Community Facilities District No. 11-1, Annexation No. 2 (Improvement Area No. 3) Town of Yucca Valley.

"Base Year" means Fiscal Year ending June 30, 2014.

"District Administrator" means the Town Manager, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

"District" means Community Facilities District No. 11-1 (Services) of the Town of Yucca Valley.

"Developed Property" means all Taxable Property for which a building permit has been issued prior to May 1st preceding the Fiscal Year in which the Special Tax is being levied.

"Dwelling Unit" means an individual single family unit or an individual residential unit within a duplex, tri-plex, four-plex, condominium or apartment structure.

"Exempt Property" means an Assessor's Parcel not subject to the Special Tax. Tax-Exempt Property includes: (i) Public Property, (ii) Property Owner Association Property, (iii) property used exclusively for the retention/detention of storm water and (iv) property designated by the Town's District Administrator as Tax-Exempt Property

"Final Map" means an Assessor's Parcel Map, a final subdivision map, other parcel map, other final map, other condominium plan, or functionally equivalent map that has been recorded in the Office of the County Recorder.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Land Use Class" means any of the classes listed in Table 1.

"Lot" means property within a recorded Final Map identified by a lot number for which a building permit has been issued or may be issued.

"Maximum Special Tax" means the maximum Special Tax, determined in accordance with Section C below that can be levied within Annexation Area No. 2 (Improvement Area No. 3) in the District in any Fiscal Year on any Assessor's Parcel.

"Property Owner Association Property" means any property within the boundaries of the District that is owned by, or irrevocably dedicated as indicated in an instrument recorded with the County Recorder to a property owner association, including any master or sub-association.

"Proportionately" means in a manner such that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels within each Land Use Class.

"Public Property" means any property within the boundaries of the District that is, at the time of the District formation or at the time of an annexation, expected to be used for rights-of-way, parks, schools or any other public purpose and is owned by or irrevocably offered for dedication to the federal government, the State, the County, or any other public agency.

"Residential Property" means any parcel on which an individual single family residence or, a duplex, tri-plex, four-plex, condominium or apartment structure may be constructed.

"Special Tax" means the Special Tax to be levied in each Fiscal Year on each Assessor's Parcel of Taxable Property to fund the Special Tax Requirement, and shall include Special Taxes levied or to be levied under Sections C and D, below.

"Special Tax Requirement" means that amount required in any Fiscal Year for the District to: (i) pay for providing the authorized services including the actual costs of maintenance, repair, monitoring, replacement of facilities, and reporting as required under all applicable permits; (ii) pay reasonable Administrative Expenses; (iii) pay any amounts required to establish or replenish any reserve funds; and (iv) pay for reasonably anticipated delinquent Special Taxes based on the delinquency rate for Special Taxes levied in the previous Fiscal Year; less any surplus of funds available from the previous Fiscal Year's Special Tax levy.

"State" means the State of California.

"Taxable Property" means all of the Assessor's Parcels within the boundaries of the District and any future annexation to Annexation Area No. 2 (Improvement Area No. 3) of the District that is not exempt from the Special Tax pursuant to law or as defined herein.

"Town" means the Town of Yucca Valley, California

"Undeveloped Property" means, for each Fiscal Year, all Assessors' Parcels of Taxable Property not classified as Developed Property or Approved Property, including an Assessor's Parcel that is designated as a remainder parcel and is not identified as potential Public Property by any final documents and/or maps available to the District Administrator.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year using the definitions above, all Taxable Property within Annexation Area No. 2 (Improvement Area No. 3) of the District shall be classified as Developed Property, Approved Property, Undeveloped Property or Exempt Property. Commencing with the Base Year and for each subsequent Fiscal Year, all Taxable Property shall be subject to Special Taxes pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX RATE

The Maximum Annual Special Tax rates for Assessor's Parcels are shown in the following tables:

TABLE 1
Equivalent Dwelling Unit Factors
Community Facilities District No. 11-1
Annexation Area No. 2 (Improvement Area 3)

Property Classification	Improvement Area 2
Developed Property Residential Non-Residential	1 EDU per dwelling unit 4.5 EDU per acre
Approved Property Residential Non-Residential	1 EDU per dwelling unit 4.5 EDU per acre
Undeveloped Property Residential Non-Residential	4.5 EDU per acre 4.5 EDU per acre
Exempt Property	N/A

TABLE 2
Maximum Special Tax for Approved Property
Community Facilities District No. 11-1
Annexation Area No. 2 (Improvement Area 3)

Property Classification	Maximum annual Special Tax
Developed Property Residential Non-Residential	\$126.20 per EDU \$567.90 per acre
Approved Property Residential Non-Residential	\$126.20 per EDU \$567.90 per acre
Undeveloped Property Residential Non-Residential	\$567.90 per acre \$567.90 per acre

On each July 1 following the Base Year, the Maximum Special Tax Rates in Table 2 shall be increased in accordance with the Annual Escalation Factor.

4. Tax-Exempt Property

No Special Tax shall be levied on Tax-Exempt Property.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2013-14, and for each subsequent Fiscal Year, the District Administrator shall calculate the Special Tax Requirement based on the definitions in Section A and levy the Special Tax as follows until the amount of the Special Tax levied equals the Special Tax Requirement. First, the Special Tax shall be levied each Fiscal Year on each Assessor's Parcel of Developed Property up to 100% of the applicable Maximum Special Tax for Developed Property. Second, if the Special Tax Requirement

has not been satisfied by the first step, then the Special Tax shall be levied each Fiscal Year on each Assessor's Parcel of Approved Property up to 100% of the applicable Maximum Special Tax for Approved Property. Third, if the Special Tax Requirement has not been satisfied by the first two steps, then the Special Tax shall be levied each Fiscal Year on each Assessor's Parcel of Undeveloped Property up to 100% of the applicable Maximum Special Tax for Undeveloped Property.

E. APPEALS

Any taxpayer that believes that the amount of the Special Tax assigned to a Parcel is in error may file a written notice with the District Administrator appealing the levy of the Special Tax. This notice is required to be filed with the District Administrator during the Fiscal Year the error is believed to have occurred. The District Administrator or designee will then promptly review the appeal and, if necessary, meet with the taxpayer. If the District Administrator verifies that the tax should be changed the Special Tax levy shall be corrected and, if applicable in any case, a refund shall be granted.

F. MANNER OF COLLECTION

Special Tax as levied pursuant to Section D above shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the District Administrator may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the District Administrator. The Special Taxes when levied shall be the lien imposed pursuant to Section 3115.5 of the Streets and Highways Code. This lien shall be a continuing lien and shall secure each levy of Special Taxes. The lien of the Special Taxes shall continue in force and effect until the Special Tax ceases to be levied in the manner provided by Section 53330.5 of the Government Code.

G. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity.

TOWN OF YUCCA VALLEY

COMMUNITY FACILITIES DISTRICT REPORT

**COMMUNITY FACILITIES DISTRICT NO. 11-1 (Services)
ANNEXATION NO. 2 (IMPROVEMENT AREA NO. 3)**

HEARING REPORT

September 7, 2012

Prepared by
K. Dennis Klingelhofer, P.E

TOWN OF YUCCA VALLEY

**COMMUNITY FACILITIES DISTRICT HEARING REPORT
COMMUNITY FACILITIES DISTRICT NO. 1(Services)
ANNEXATION NO. 2 (IMPROVEMENT AREA NO. 3)**

REPORT CONTENTS

Section I	Introduction
Section II	Description of Services and Estimated Costs
Section III	Description of District of CFD
Section III	Overview of the Proposed CFD

Exhibits

Exhibit A	List of Authorized Services – Improvement Area No. 3
Exhibit B.	Rate and Method of Apportionment – Improvement Area No. 3
Exhibit C	CFD Boundary Map – Annexation No. 2

TOWN OF YUCCA VALLEY
COMMUNITY FACILITIES DISTRICT NO. 11-1 (Services)
ANNEXATION NO. 2 (IMPROVEMENT AREA NO. 3)

Section I – Introduction

The Town Council of the Town of Yucca Valley has been requested to initiate proceedings to annex territory into Community Facilities District No. 11-1 (Services) (the “District”) to include the property which is contained within Yucca Valley Retail Specific Plan and encompasses approximately 25.41 acres located at the southeast corner of the intersection of Twentynine Palms Highway (State Highway 62) and Avalon Avenue. Planned development on the 25.41 acre parcel will be consist of an approximately 184,146 s.f. single retail use, a 3,500 s.f. retail use and a 4,000 s.f. fast-food restaurant use.

The Town Council adopted a resolution entitled “Resolution of Intention to Annex Territory to Community Facilities District No. 11-1” Resolution No. 12-45 pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”), on December 4, 2012 declaring its intention to annex territory located within Annexation Area No. 2 (Improvement Area No. 3) and ordered the preparation of a written Community Facilities District Report (the “Report”) as required by the Act.

This report has been prepared in accordance with Section 53321.5 of the Act and includes among other information:

Section II – Description of Services and Estimated Costs This section describes the services to be funded within Annexation Area No. 2 (Improvement Area No. 3), the estimated annual costs associated with providing those services and the proposed annual maximum special tax for parcels within the District.

Section III – Description of District of CFD This section contains the map showing the proposed boundaries of Annexation Area No. 2 (Improvement Area No. 3) within the CFD and those properties and parcels on which special taxes may be levied to pay for the costs and expenses of the services to be funded.

Section III – Overview of the Proposed CFD This section of the report describes the proposed structure of Annexation Area No. 2 (Improvement Area No. 3) within the CFD and the Rate and Method for the allocation of the special tax within Annexation Area No. 2 (Improvement Area No. 3).

In addition there are three exhibits attached to this report. Exhibit A is the list of authorized services within Improvement Area No. 3 the CFD may fund. Exhibit B is the Rate and Method of Apportionment for Annexation No. 2 (Improvement Area No. 3). Exhibit C is the Boundary Map for Annexation No. 2 (Improvement Area No. 3).

Section II – Description of Services and Estimate of Costs

Pursuant to Resolution 12-45, the types of public services to be funded, in whole or in part by the District, are generally described as the maintenance, operation and management of the following types of facilities.

- Maintenance of public streets and alleyways, including pavement, traffic control devices, landscaping and other public improvements installed within the public rights-of-way; and
- Maintenance of all public pedestrian or bicycle pathways within the public rights-of-way; and
- Public Lighting and appurtenant facilities, including street lights within public right-of-way and traffic signals located at the entrance driveway on Twentynine Palms Highway, the intersection of Twentynine Palms Highway and Avalon Street, the intersection of Twentynine Palms Hwy and Inca Trail, the intersection of Palomar Avenue and Yucca Trail, and the intersection of Joshua Lane and Yucca Trail, which will include all electrical utility charges, and
- Town and County costs associated with the setting, levying and collection of the special tax, and in the administration of the District including the contract administration.

The estimated costs for the maintenance of the eligible improvements within Annexation Area No. 2 (Improvement Area No. 3) of the District are shown below, including costs for future repairs or replacement of the improvements. The costs shown also include 25% contingencies, contract administration and Town overhead for the administration of the District. The costs shown are applicable to fiscal year 2013-14.

Right-of-Way Maintenance, Operation and Management

The Improvement Area is anticipated to maintain, operate and manage fifty percent (50%) of the public improvements installed within Avalon Street from the intersection of 29 Palms Highway to southern property line of the project, and fifty percent (50%) of the public improvements installed within Palisade Drive along the southern boundary of the project. This includes slurry seals (3-5 year cycle) and pavement overlays (10-15 year cycle), miscellaneous pavement repairs annually, restriping and as-needed curb, gutter and sidewalk repair. The Improvement Area will also operate and maintain 5 traffic signals and 7 street lights.

Total Linear Feet	1,860
Total Area (Square Feet)	39,120
Cost per Square Foot (2013-14 \$'s)	\$0.37
Total Costs (2013-14 \$'s)	\$14,430
Improvement Area EDU's	114.345
Fiscal Year 2013-14 Cost per EDU	\$126.20

Section III - Proposed Boundaries of CFD

The proposed District is generally described as Yucca Valley Retail Specific Plan, as may be amended from time to time, and includes the following Assessor's Parcel Numbers:

<u>Assessor's Parcel Number</u>	<u>Owner</u>	<u>Acreage</u>
601-201-37	Wall-Mart	25.41

Section IV – Overview of the Proposed CFD

The area proposed to be annexed to CFD 11-01 as Annexation No. 2 (Improvement Area No. 3) will levy an annual special tax on all of the property in Improvement Area No. 3 unless exempted by law or, the Rate and Method of Assessment (RMA) for the purpose of maintaining, managing and operating the improvements within the Improvement Area. Each year the Town Engineer will develop a budget for the projected costs of providing the authorized services within the Improvement Area for the CFD for the coming year, including the costs of:

- Authorized CFD services, including the pro-rata share of costs for future lump sum expenditures;
- Costs of administering the CFD, including County costs and contract administration; and
- Any amounts needed to cure actual or projected delinquencies in special taxes for the current or previous years.

The Tax Formula shall then be used to allocate the total amount required to provide the authorized services to each taxable parcel based upon the EDU’s assigned based on the Property Classification as shown below

Equivalent Dwelling Unit Factors

Property Classification	Improvement Area 1
Developed Property Residential Non-Residential	1 EDU per dwelling unit 4.5 EDU per acre
Approved Property Residential Non-Residential	1 EDU per dwelling unit 4.5 EDU per acre
Undeveloped Property Residential Non-Residential	1 EDU per dwelling unit 4.5 EDU per acre
Exempt Property	N/A

A list of parcels subject to the special tax will be prepared and submitted to the County Assessor for inclusion on the tax roll. The special tax will be collected in the same manner and at the same time as ad valorem property taxes.

The maximum special tax which may be levied upon any taxable parcel is set at a base rate of \$126.20 per EDU. The maximum special tax will escalate at a rate not to exceed 4 percent per year to cover increases in the costs of providing the authorized services. The special tax shall be levied and collected in perpetuity.

Exhibit A
Community Facilities District No. 11-1 (Services)
Annexation No. 2 (Improvement Area No. 3)

List of Authorized Services

The maintenance obligations to be funded, in whole, by the levying of an annual special tax upon all taxable parcels within Annexation Area No. 2 (Improvement Area No. 3) of the District shall include all of the following:

1. Maintenance of public streets and alleyways, including pavement, traffic control devices, landscaping and other public improvements installed within the public rights-of-way; and
2. Maintenance of all public pedestrian or bicycle pathways within the public rights-of-way; and
3. Public Lighting and appurtenant facilities, including street lights within public right-of-way and traffic signals located at the entrance driveway on Twentynine Palms Highway, the intersection of Twentynine Palms Highway and Avalon Street, the intersection of Twentynine Palms Hwy and Inca Trail, the intersection of Palomar Avenue and Yucca Trail, and the intersection of Joshua Lane and Yucca Trail, which will include all electrical utility charges; and
4. Town and County costs associated with the setting, levying and collection of the special tax, and in the administration of the District including the contract administration.

In addition, the Special Taxes collected may be set-aside in a designated replacement fund to be used to fund the future replacement or repair of any of the items described above or other improvements funded by CFD No. 11-1, Annexation Area No. 2 (Improvement Area No. 3).

EXHIBIT B

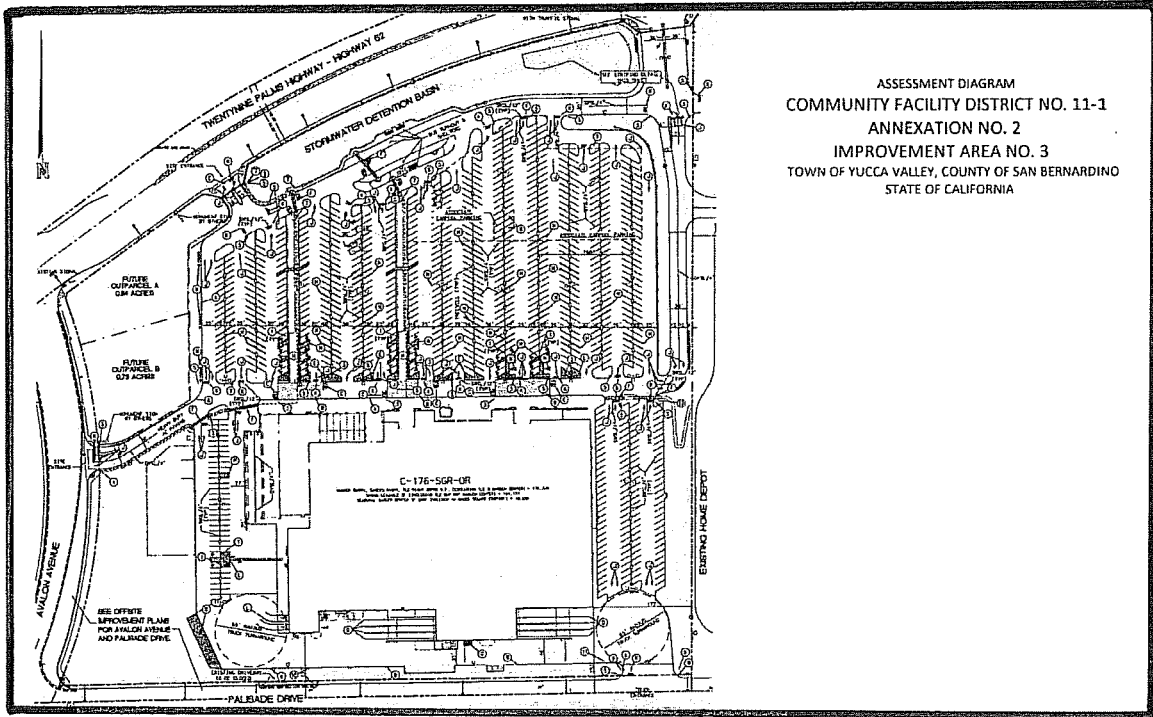
**TOWN OF YUCCA VALLEY
COMMUNITY FACILITIES DISTRICT NO. 11-1 (Services)
ANNEXATION NO. 2 (IMPROVEMENT AREA NO. 3)**

RATE AND METHOD OF APPORTIONMENT

The Rate and Method of Apportionment of Special Tax is shown on the following pages.

Exhibit C
Community Facilities District No. 11-1 (Services)
Annexation No. 2 (Improvement Area No. 3)

TOWN OF YUCCA VALLEY
ANNEXATION AREA NO. 1 (IMPROVEMENT AREA NO. 3)
Community Facilities District No. 11-1 (Services)



ASSESSMENT DIAGRAM
COMMUNITY FACILITY DISTRICT NO. 11-1
ANNEXATION NO. 2
IMPROVEMENT AREA NO. 3
TOWN OF YUCCA VALLEY, COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Jamie Anderson, Town Clerk
Date: January 30, 2013
For Council Meeting: February 5, 2013

Subject: Appointments to Parks, Recreation and Cultural Commission and Planning Commission

Prior Council Review: Council adopted Ordinance No. 223 amending the terms of the Commissions to coincide with Council terms.

Recommendation: Affirm the appointment of Tim Humphreville and Jeff Drozd to the Planning Commission and Laurine Silver and Meredith Jones to the Parks, Recreation and Cultural Commission; Council Member Rowe nominate a member to the Planning Commission to fill the unexpired term of Commissioner Alberg.

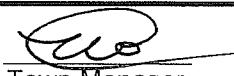
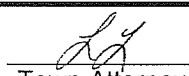
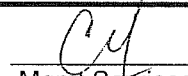
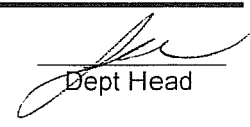
Summary: Each Council Member nominates, subject to ratification by the Council, a member to the Commissions, and acts as liaison to those Commissioners.

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 (Voice vote)

Discussion: On March 1, 2011 Council adopted Ordinance 223 amending the terms of Commissioners to coincide with the term of the Council Member appointing them. Terms are for 4 years and run February 1at the beginning of the Member's term to January 31st, following the termination of the Members Term. The beginning and ending dates of the Commission terms were amended to allow incoming Council Members time to review their commission appointments and seek applications from potential Commissioners. Council Member Huntington and Mayor Pro Tem Lombardo were elected to four year terms at the General Municipal Election of November 6, 2012

Reviewed By:

			
Town Manager	Town Attorney	Mgmt Services	Dept Head

<input checked="" type="checkbox"/> Department Report	<input type="checkbox"/> Ordinance Action	<input type="checkbox"/> Resolution Action	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Consent	<input type="checkbox"/> Minute Action	<input type="checkbox"/> Receive and File	<input type="checkbox"/> Study Session

Council Member Huntington and Mayor Pro Tem Lombardo have expressed their desire for nominations as follows:

Council Member Huntington:

- Jeff Drozd Planning Commission
- Laurine Silver Parks Recreation and Cultural Commission,

for terms expiring on January 31, 2017.

Mayor Pro Tem Lombardo:

- Tim Humphreville Planning Commission
- Meredith Jones Parks, Recreation and Cultural Commission,

for terms expiring on January 31, 2017.

In addition, Commissioner Alberg resigned from the Planning Commission in November. The position was advertised and posted and applications received from the following:

- Steven D. Whitten
- Soltanhamid Nooraei

This appointment is Councilmember Rowe's to make.

Alternatives: Do not ratify the nominations or make appointments at this time. Seek additional persons to apply.

Fiscal impact: None

TOWN COUNCIL STAFF REPORT

To: Mayor & Town Council
From: Jamie Anderson, Town Clerk
Date: January 31, 2013
For Council Meeting: February 5, 2013
Subject: Selection of Ad Hoc Committees to meet with Basin Wide Foundation and Supervisor Ramos

Prior Council Review: Council discussion at the January 22, 2013 meeting

Recommendation: Select two Council Members each to serve on ad-hoc committees to meet with 1) Basin Wide Foundation and 2) Supervisor Ramos

Summary: the Council periodically sets up Ad Hoc Committees to meet with members of other community boards. Committee Members do not receive any compensation for participation in these committees.

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

Discussion: At the Town Council Meeting of January 22, 2013, Mayor Abel requested that an Ad Hoc Committee consisting of two Council Members be formed to meet with representatives from the Basin Wide Foundation to discuss Brehm Park. Council concurred.

In addition, Council concurred with the Town Manager's request to form an Ad Hoc Committee to meet with Supervisor Ramos regarding FY 2013-14 budget development.

Alternatives: do not form the committees.

Fiscal impact: None

Reviewed By:


Town Manager


Town Attorney


Mgmt Services


Dept Head

<input checked="" type="checkbox"/> Department Report	<input type="checkbox"/> Ordinance Action	<input type="checkbox"/> Resolution Action	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Consent	<input type="checkbox"/> Minute Action	<input type="checkbox"/> Receive and File	<input type="checkbox"/> Policy Disc.



TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Merl Abel, Mayor
Date: January 30, 2013
For Council Meeting: February 5, 2013

**Subject: SECOND AMENDED & RESTATED EMPLOYMENT AGREEMENT
BETWEEN THE TOWN OF YUCCA VALLEY AND MARK NUAIMI**

Prior Review: Approval of the original agreement (June 17, 2010) and first amendment (May 17, 2011)

Recommendation: Approve the Second Amended & Restated Employment Agreement between the Town of Yucca Valley and Mark Nuaimi

Order of Procedure:

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

Background: According to the current agreement with the Town Manager, Section 2.4 provides:

2.4 Annual Salary Review. The Town Council and Employee agree to conduct an annual salary review, commencing January 2012 and concurrently with the annual performance evaluation set forth in Section 5.2. Any action to approve an increase must be approved by a majority vote of the Council at a public meeting.

The Town Manager supported Amendment #1 to the Employment Agreement. This amendment increased the amount of Employee contribution towards the cost of retirement – an increase from 2% to 8%, resulting in a reduced cost to the Town and a decrease in total compensation to the employee. There have been no other adjustments to the Town Manager’s contract since hiring.

Reviewed By: _____ _____ _____ _____
 Town Manager Town Attorney Mgmt Services Dept Head

<input checked="" type="checkbox"/> Department Report	<input type="checkbox"/> Ordinance Action	<input type="checkbox"/> Resolution Action	<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Consent	<input type="checkbox"/> Minute Action	<input type="checkbox"/> Receive and File	<input type="checkbox"/> Study Item

Discussion: Since entering into the contract with the Town, several total compensation adjustments that were imposed on all Town staff have reduced the total fiscal impact to the Town of the Town Manager's employment contract by over \$9,000 annually including:

- Contribution towards the cost of the CalPERS retirement was increased from 2% to 8% of annual salary (\$11,400 cost reduction to the Town, and an equal reduction in total compensation to the employee);
- Vacation accrual was reduced from 120 hours to 80 hours per year (\$3,600 annual savings with corresponding decrease in employee compensation);
- Paid Time Off (PTO) Leave was increased from 56 hours to 80 hours per year (\$2,200 annual cost increase with corresponding increase in employee compensation);
- Cafeteria benefit increased from \$757 to \$1,050 per month (\$3,500 annual cost increase with corresponding increase in employee compensation);

The net impact of these changes was a reduction in employee costs to the Town of \$9,300 and corresponding decrease in the original employment compensation offered to the Town Manager.

During the Town Manager's annual performance review (Attached), the Town Manager requested several adjustments to the Employment contract. Each of these adjustments is discussed further. The Town Manager proposed that these terms remain through a contract term of June 30, 2016.

Paid Time Off (PTO) Leave

Paid Time Off (PTO) Leave is awarded to those exempt Town employees whose attendance is required at extra hour meetings and who do not receive overtime pay. Up until last year, the benefit was 56 hours per year. The Town Council approved an increase to 80 hours annually for all exempt employees.

Given the scope of responsibilities of the Town Manager, the hours required to accomplish the Town Council's Goals consistently require more time than a typical 40 hour work-week. On average, the Town Manager is currently working 50 – 55 hours per week. This additional time represents value to the Town between \$30,000 and \$50,000 based upon the current compensation of the position. The requested increase in PTO Leave (from 80 to 160 hours) would compensate the Town Manager an additional \$7,300 for that \$30,000 to \$50,000 of value.

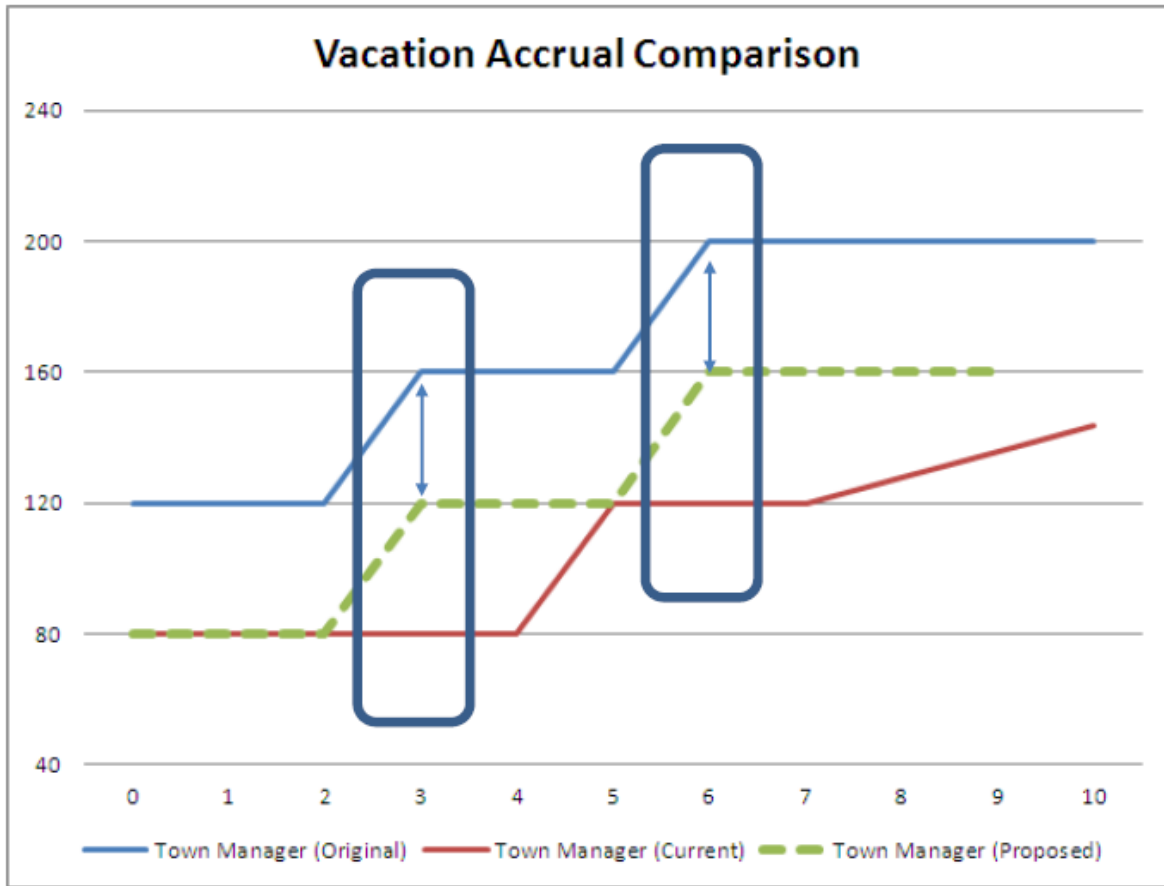
	Overtime (hrs > 40)	Weeks 40		Annual Salary	
Work Week				\$190,000	
		Extra Hours		Hourly Rate	Value of Additional Time
40	0	0		\$ 91.35	
45	5	200		\$ 81.20	\$18,269.23
50	10	400		\$ 73.08	\$36,538.46
55	15	600		\$ 66.43	\$54,807.69
60	20	800		\$ 60.90	\$73,076.92
				Admin Time	
			Current	80	\$ 7,307.69
			Requested	160	\$14,615.38

Unlike a salary increase or cost of living adjustment, an increase in PTO Leave does not increase the long term liability to the Town as there are no compounding effects of future year costs, nor would the amount be included in any retirement calculations. The Town Manager requested this additional PTO Leave be awarded effective for the current fiscal year.

During negotiations with the Town Manager, the Council's negotiating team expressed concerns about future year awards of additional PTO Leave. The Council committee requested that future Town Councils could take action to reduce the PTO Leave back to the current 80 hours if a majority of the Council determines during the annual performance review that the Town Manager's additional efforts on behalf of the Town Council are not continuing at the current levels.

Vacation Accrual

When the Town modified the Vacation Accrual schedule for all Town staff, a handful of Management staff would have lost two weeks of vacation accrual on an annual basis. The implementation of the policy was amended to only impact employees by an amount no greater than 40 hours of annual vacation accrual.



Upon completing the third year of service, the Town Manager's current vacation accrual will be 80 hours below the amount of the original contract. The Town Manager requested that this be addressed in the same manner as other Town staff. This request will increase vacation accrual to 120 hours annually when the Town Manager celebrates his third year anniversary with the Town (starting July 6, 2013).

Longevity Incentive

In lieu of a base salary increase, The Town Manager has requested an increase in the amount of Deferred Compensation that the Employment Agreement offers. This request would result in the following Deferred Compensation schedule:

- (a) Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500) on 1/8/13;
- (b) Fifteen Thousand and 00/100 Dollars (\$15,000) on 1/8/14;
- (c) Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500) on 1/8/15;
- (d) Twenty Thousand and 00/100 Dollars (\$20,000) on 1/8/16.

In exchange for this longevity benefit, the Town Manager would forego Cost of Living Adjustment(s), if any, approved by the Town Council for Town staff. This action would freeze the base salary at the current amount of \$190,000, limiting the increase in long-term liability to the Town associated with compounding salary increases.

Contract Term

The original contract with the Town Manager was open-ended. It provided for annual performance reviews along with annual salary reviews. This amendment establishes a term of the contract through June 30, 2016, maintains the provisions for an annual performance review, fixes the salary & compensation levels through the term of the agreement, and maintains the “at-will” status of the Town Manager.

Compliance with State Law / Contract Clean Up

In an attempt to increase transparency and accountability in public agency executive contracts, effective January 1, 2012, Assembly Bill (AB) 1344 amended the California Government Code to add substantive limitations on employment contracts for senior public officials. Enacted primarily in reaction to the City of Bell controversy, AB 1344 added the following provisions:

- AB 1344 prohibits the Town Council from executing or renewing a contract for a local agency executive that includes an automatic increase in compensation that exceeds a cost-of-living adjustment (“COLA”). (Gov. Code § 3511.2(a).)
- AB 1344 also mandates that if a governing board enters into or renews a contract with a local agency executive that provides for: (1) paid leave for the official pending an investigation; (2) funds for the legal criminal defense of the official, or (3) any cash settlement related to the official’s termination, the contract must include a provision that such sums be fully reimbursed by the official to the local public agency if the official is convicted of a crime involving abuse of his or her office or position. In addition, AB 1344 provides that if a local public agency provides these types of payments absent a contractual obligation, such sums must be fully reimbursed by the official to the agency if the official is convicted of a crime involving abuse of his or her office or position. (Gov. Code §53243.3.)

In addition to these state mandated changes, there are a few additional, non-substantive changes being recommended to the Employment contract that remove unnecessary language that is no longer applicable.

Alternatives: No alternative is recommended.

Fiscal impact: The attached table shows the total compensation costs for the Original contract, a simple “Merit Increase” scenario, and the Requested Contract over the term of the contract. The Requested changes to the Employment Agreement translate to a total increase of \$11,217 over the term of the contract compared to the original contract with the Town Manager. These amounts include ALL costs associated with the Employment contract, including value of leave, retirement contributions from the Town, medical benefits, car allowance, and other benefits.

Package	FY 11/12 Costs	FY 12/13 Costs	FY 13/14 Costs	FY 14/15 Costs	FY 15/16 Costs	Five Year Cost Differential
Original Contract	\$289,212	\$289,212	\$292,865	\$292,865	\$292,865	\$ -
2.5% Merit Increase	\$279,878	\$286,095	\$292,468	\$299,001	\$309,729	\$ 10,152
Requested Contract	\$279,878	\$293,340	\$295,840	\$298,340	\$300,840	\$ 11,217



Prior Year /
Current Costs

Attachments:

2012 Performance Review

Second Amended & Restated Employment Agreement (clean & tracking versions)

Chief Executive Compensation Comparison

**TOWN OF YUCCA VALLEY
Evaluation Rating Form- 2012**

TOWN MANAGER

Submitted: January 2013

Review Period: January 1, 2012 through December 31, 2012					Mark Nuaimi
<u>Rating Scale:</u>	Excellent 5	Above Average 4	Satisfactory 3	Needs Improvement 2	Unsatisfactory 1

1. TECHNICAL COMPETENCE 4.65

GOAL: Continue progress on implementation of the Town’s Strategic Plan based on Council direction.

This goal should be demonstrated and can be measured through these functions:

Knowledge of laws, rules, ordinances and codes; demonstrates knowledge of Town’s issues and concerns; Business; Community, Governmental agencies; public stakeholders; continue progress on Plans and programs; continue implementation, maintain sensitivity to business/community environmental concerns.

2. COMMUNITY RELATIONSHIPS 4.1

GOAL: Develop and maintain effective relationships with community

This goal should be demonstrated and can be measured through these functions:

Effective working relationships with businesses; continue to build relationships with local businesses, organizations, and coalitions with the community; continue to respond to the needs and concerns expressed by the diverse community factions.

3. ORGANIZATION MANAGEMENT 4.9

GOAL: Develop and maintain an Executive Management Team that effectively creates and implements innovative solutions to existing and future issues.

This goal should be demonstrated and can be measured through these functions:

Provide leadership to the staff of the Town of Yucca Valley through: Communication of goals; actions that are consistent with the goals; administrative expertise; building an organizational environment that promotes innovation, creativity and risk-taking; continuous improvement of the Town staff through innovation and creativity; seek new and innovative solutions to advance the goals of the Town of Yucca Valley and the regulated business/community environment; implement technology advancements; staff development.

4. FISCAL ACCOUNTABILITY	4.85
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GOAL: Balance budget and maintain stability

This goal should be demonstrated and can be measured through these functions:

Demonstrate fiscal accountability by maintaining a balanced budget with reserves established according to Council policy.

5. COMMUNICATION AND COUNCIL ACCOUNTABILITY	4.8
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GOAL: Well informed Council

This goal should be demonstrated and can be measured through these functions:

Provide timely and accurate communication to the Town Council; provide effective, understandable and open communication to the Town Council; actions that are consistent with the understanding that the Town Council is the decision making body; effective working relationships with the Town Council Members; and demonstrate cooperative relationships with the Town Council.

6. PROMOTE ORGANIZATION- WIDE CUSTOMER SERVICE	4.75
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GOAL: Ensure that Town staff has customer service as a number one priority

This goal should be demonstrated and can be measured through these functions:

Provide leadership to the staff of the Town of Yucca Valley through: Communication of customer service goals; actions that are consistent with the goals; administrative expertise; building an organizational environment that promotes effective, excellent customer service.

7. OVERALL RATING FOR TOWN MANAGER	4.75
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Summary of Performance Reviews

Performance Category	Goal(s)	Review Period		
		2010	2011	2012
Technical Competence	Continue progress on implementation of Town's Strategic Plan based on Council direction	4.6	4.7	4.65
Community Relationships	Develop and Maintain effective relationships within the community	3.4	3.5	4.1
Organization Management	Develop and maintain an Executive Management Team that effectively creates and implements innovative solutions to existing and future issues	4.2	4.8	4.9
Fiscal Accountability	Balance budget and maintain stability	4.6	5	4.85
Communication and Council Accountability	Well Informed Council	4.6	4.7	4.8
Promote Organization Wide Customer Service	Ensure that Town staff has customer service as a number one priority	3.5	4.3	4.75
Overall Rating for Town Manager		4.15	4.5	4.75

**TOWN OF YUCCA VALLEY
SECOND AMENDED & RESTATED EMPLOYMENT AGREEMENT
For the Position of
TOWN MANAGER**

This SECOND AMENDED & RESTATED EMPLOYMENT AGREEMENT ("Second Amended Agreement") is entered this 5th day of February, 2013, by and between the TOWN OF YUCCA VALLEY ("Town"), a California general law Town and municipal corporation, and MARK NUAIMI ("Employee"), an individual.

RECITALS

WHEREAS, it is the desire of the Town Council of the Town of Yucca Valley (hereinafter the "Town Council") to employ an individual to serve in the position of Town Manager, which position is prescribed by state law and the City's Municipal Code; and

WHEREAS, on June 6, 2010, Employee was hired for the position of Town Manager pursuant to an "Employment Agreement" executed June 17, 2010 (the "Original Agreement"). On May 17, 2011, the Original Agreement was amended to increase the amount of Employee's contribution towards the cost of retirement from 2% to 8%, resulting in a reduced cost to the Town and a decrease in total compensation to Employee ("First Amendment"). There have been no other amendments to the Original Agreement or First Amendment since.

WHEREAS, it is the desire of the Town Council to (i) retain the services of Employee after having competently served the Town since July 6, 2010, (ii) have Employee perform all of the regular functions of the Town Manager pursuant to the codes and regulations of Town, (iii) to provide inducement to Employee to maintain such employment, and (iv) to establish the terms and conditions of Employee's services to the Town through this Second Amended Agreement; and

WHEREAS, Employee has the necessary level of education, having earned a Master's Degree in Business Administration from the University of La Verne and a bachelor's degree in electrical engineering from California State Polytechnic University, Pomona; and

WHEREAS, Employee has demonstrated the requisite skills and expertise to fulfill such position during the over two years of service with the Town, along with the practical experience by serving as Assistant City Manager for over three years with the City of Colton, serving in an elected capacity as Mayor/Councilman for over thirteen years with the City of Fontana, and Employee desires to maintain employment with the Town.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, Town and Employee hereby agree as follows:

A G R E E M E N T

1.0 EMPLOYMENT & DUTIES

1.1 Duties. Town hereby employs Employee as Town Manager for the Town to perform the functions and duties of that position, as described in the Yucca Valley Municipal Code, and to perform such other duties and functions as the Town Council shall from time to time assign. Employee acknowledges that his duties shall include services to the Successor Agency to the Yucca Valley Redevelopment Agency since the Town Manager also served as the Redevelopment Agency's Executive Director. Employee further agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position. Employee acknowledges that proper performance of the duties of the Town Manager will often require the performance of necessary services outside of normal business hours. However, the Town intends that reasonable time off be permitted to Employee, such as is customary for exempt management employees, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities.

(a) Employee shall focus his or her professional time, ability, and attention to Town business during the term of this Second Amended Agreement.

(b) Employee shall not engage, without the express prior written consent of the Town Council, in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the Town, that might cause a conflict-of-interest with the Town, or that otherwise might interfere with the business or operation of the Town or the satisfactory performance of Employee's duties as Town Manager.

(c) The Employee understands the Town Council belief that Employee's position as Town Manager shall require significant time, attention, and focus of priority such that it is not possible for Employee to fulfill his obligations as Town Manager while serving in any elected or appointed capacity for another governmental agency.

1.4 Employment Status. Employee shall serve at the will and pleasure of the Town Council under this Second Amended Agreement and understands he is an "at-will" employee serving at the pleasure of Town Council and subject to termination by the Town at any time, as set forth in Section 3.3 below.

1.5 Town Documents. All data, studies, reports, and other documents prepared by Employee while performing his duties during the term of this Second Amended Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer

program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Second Amended Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials shall not, without the prior written consent of the Town Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Second Amended Agreement, except as required by law.

1.6 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Second Amended Agreement, Employee shall be compensated One Hundred and Ninety Thousand and 00/100 Dollars (\$190,000.00) annually (“Salary”), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. Such Salary shall be adjusted for payroll taxes, workers’ compensation, and other payroll-related liability costs.

2.2 Deferred Compensation. Town agrees to pay an amount according to the following payment schedule on Employee’s behalf into a qualified 401(a) plan established by the Town:

- (a) Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500) on 1/8/13;
- (b) Fifteen Thousand and 00/100 Dollars (\$15,000) on 1/8/14;
- (c) Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500) on 1/8/15;
- (d) Twenty Thousand and 00/100 Dollars (\$20,000) on 1/8/16.

Such payment shall be made to Employee’s account during the term of the Employee’s employment as Town Manager, unless Employee elects, with Town’s consent, to pay this directly to Employee as current salary.

2.3 Cost of Living Increase. In exchange for increased deferred compensation schedule, Town will not be required to provide a cost of living adjustment in Employee’s base salary throughout the term of this Second Amended Agreement.

2.4 Annual Salary Review. The Town has the right, but not the obligation, to conduct an annual salary review of Employee concurrently with the annual performance evaluation set forth in Section 5.2. The Employee agrees to a freeze in Salary (as defined above) for the duration of this Second Amended Agreement.

2.5 Reimbursement. Notwithstanding Section 2.6, Town shall reimburse Employee for reasonable and necessary travel greater than 75 miles from Yucca Valley, subsistence, and other business expenses incurred by Employee in the performance of his duties. There shall be no reimbursement for commuting-relating travel expenses. All reimbursements shall be subject to and in accordance with California law and the Town’s adopted Employee Reimbursement Policy.

2.6 Automobile Allowance. Employee's duties require the extensive use of an automobile in the normal course of business. Accordingly, Employee shall receive an automobile allowance of up to Six Hundred Dollars (\$600) monthly to be paid when the other Department Heads receive their automobile allowances. Both parties acknowledge that it will be occasionally necessary for Employee to utilize a 4-wheel drive Town-owned pool car to access areas of Yucca Valley or the surrounding communities and use of such a vehicle shall not affect Employee's automotive allowance.

3.0 TERM

3.1 Commencement & Effective Date. This Second Amendment shall commence on February 5th, 2013. Certain provisions of this Agreement require an effective date of July 1, 2012. This Second Amended Agreement restates and supersedes the Original Agreement and First Amendment.

3.2 Term. This Second Amended Agreement shall remain in effect until June 30, 2016, at the conclusion of which this Second Amended Agreement shall automatically terminate. The Term of this Second Amended Agreement may be extended upon mutual concurrence from the Town and the Employee.

3.3 Termination by Town Council or Employee. The Town Council may terminate this Second Amended Agreement at any time with or without cause and without prior notice or hearing. Employee may terminate this Second Amended Agreement at any time following commencement of services, with or without cause, upon at least one hundred twenty (120) days' written notice before the effective date of termination of the Second Amended Agreement, unless a shorter period is acceptable to the Town.

3.4 Definition of Cause. For the purposes of this Second Amended Agreement, "cause" for termination shall include, but not be limited to, the following: theft or attempted theft, financial mismanagement, material dishonesty, willful or persistent material breach of duties, engaging in unlawful discrimination or harassment of employees or any third party while on Town premises or time, conviction of a felony, engaging in conduct tending to bring embarrassment or disrepute to the Town, unauthorized or excessive absences, willful misconduct as defined in Yucca Valley Municipal Code § 2.08.100, or similar matters.

3.5 Waiver of Certain Termination Rights. Employee expressly waives any rights provided under the City's Personnel System or Policies, and any rights provided to the Town Manager under the Yucca Valley Municipal Code or under State or Federal law to any form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, except those rights Employee may have under the California or Federal Constitutions to a name-clearing hearing.

4.0 SEVERANCE

4.1 Severance. In the event the Town terminates this Second Amended Agreement for cause, Employee shall have the severance rights provided in Yucca Valley Municipal Code § 2.08.090, except as otherwise specifically provided in this Article 4.0. Section 2.08.090 and this Article shall constitute the sole and only entitlement of Employee in the event of termination

for cause, and Employee expressly waives any and all other rights except as provided herein. Nothing in this paragraph shall be construed as precluding Employee's right to contest the appropriateness of termination in San Bernardino Superior Court or any court of competent jurisdiction or otherwise enforce the provisions of this Second Amended Agreement.

(a) Severance Pay. In the event of termination of Employee by the Town without cause, the Town shall provide the Employee with: (1) Eight (8) months Salary; and (2) continuation of Employee's health benefits as of the time of termination, for twelve (12) months or until Employee finds other employment, whichever occurs first. The Salary severance payment required under this subparagraph shall be increased by one (1) month on an annual basis, beginning January 8, 2014, except that under no circumstances shall the total Salary severance payment exceed twelve (12) months.

(b) Application of Government Code Provisions. Notwithstanding any other provision of this Second Amended Agreement, the following State law restrictions upon Employee's Salary and benefits shall take precedent:

- a. Government Code Section 53260 provides that all contracts of employment with a Town must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly Salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. The severance payments provided for in this Article 4.0 are so limited by this provision and under no circumstances may any severance payment be made to Employee except after amendment of this Article 4.0.
- b. If this Second Amended Agreement provides for: (1) paid leave for the official pending an investigation; (2) funds for the legal criminal defense of the official, or (3) any cash settlement related to Employees' termination, such sums shall be fully reimbursed by Employee to the Town if the Employee is convicted of a crime involving abuse of his or her office or position. All provisions of Government Code § 53243.3 shall take precedence over the terms of this Second Amended Agreement.
- c. Notwithstanding any other provisions of this Second Amended Agreement, it shall be prohibited for this Second Amended Agreement to provide an automatic renewal hereof that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits. Government Code § 3511.2 is hereby incorporated into the terms of this Second Amendment as follows:

"On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

- (a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5" (i.e., a cash settlement that exceeds 18 months of the Salary and benefits).

(c) No Severance Pay if Termination Initiated by Employee. Employee expressly agrees that he shall not be entitled to any severance payment as the result of the termination of this Second Amended Agreement if such termination is initiated by Employee.

4.2 Payment. Half of any severance payment required under this Article shall be paid within ten (10) days of termination. The balance of the Salary payment shall be paid monthly following ninety (90) days following the date of separation.

5.0 PERFORMANCE EVALUATIONS.

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the Town. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.4 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Second Amended Agreement, or the services of Employee hereunder.

5.2 Annual Evaluation. The Town Council shall conduct a review and evaluate the performance of Employee on an annual basis, commencing January 8, 2014 and annually thereafter during the term of the Employee's employment as Town Manager. The review and evaluation shall be in accordance with specific criteria developed jointly by the Town Council and Employee. The evaluation shall be predicated on such criteria, as well as any other deemed appropriate by the Town Council, provided it is communicated in writing to Employee. Thereafter, the Town Council shall provide Employee with a written summary statement of the performance evaluation and shall provide an opportunity for Employee to discuss the contents thereof with him for the purpose of improving the overall effectiveness of Employee in his position, including an opportunity for Employee to comment on the evaluation should Employee so elect.

5.3 Goals and Objectives. Annually, the Town Council and the Employee shall define goals and performance objectives that they determine are necessary for the proper operation of the Town and, in the attainment of the Town Council's policy objectives, shall further establish a relative priority among those various goals and objectives. The goals and objectives shall be reduced to writing. The goals and objectives shall be generally obtainable within the time limitations as specified and the annual operating and capital budgets and appropriations as provided.

6.0 FRINGE BENEFITS AND OTHER COMPENSATION.

6.1 Annual Leave.

(a) Vacation – Employee currently accrues vacation at a rate equivalent to Eighty (80) Hours per year (which accrual shall be consistent with the Town's adopted vacation

accrual policy). Effective July 6, 2013, the rate of accrual will increase to fifteen (15) days of vacation per year, 4.62 hours accrued per pay period.

(b) Paid Time Off (PTO) Leave -- Effective July 1, 2012, the Employee shall receive One Hundred Sixty (160) hours of PTO Leave per fiscal year. Town Council may elect to reduce PTO to Eighty (80) hours upon determination by a majority of the Council that the Employee's efforts don't warrant additional award of PTO. Such determination shall be included in the Annual Performance Evaluation.

(c) Employee shall accrue on the same basis as other Town Management Employees the maximum level of sick leave, holiday, and other benefits as given in an equal number to other Department Heads of the Town.

6.2 Health and Life Insurance. Town agrees to put into force and to make such premium payments for Employee for insurance policies for life, accident, sickness, dental, vision, short and long-term disability income benefits, major medical and dependents' coverage group insurance covering Employee and his dependents to the same level as the other Management Employees receive. Notwithstanding the forgoing, the Town agrees that the life insurance provided for the benefit of the Employee's beneficiaries shall be term life insurance in an amount equal to two times (2x) Employee's annual base salary plus deferred compensation.

6.3 Other Benefits.

(a) Employee shall receive the same PERS benefit provided to non-sworn department heads. Employee agrees to pay eight percent (8%) towards the employee portion of the PERS premiums. The amount of Employee's share toward PERS benefit shall be set at the same amount as other non-sworn department heads.

(b) Except as otherwise described in this Article 6, Town agrees to give the Employee all other benefits that are given to other Town Department Heads generally.

7.0 OTHER TERMS – CONDITIONS OF EMPLOYMENT

7.1 Dues, Subscriptions and License Fees. Town agrees to pay for the professional dues and subscriptions necessary for Employee's full participation in national, state, regional and local associations and organizations necessary and desirable for his professional participation, growth and advancement, and for the good of the Town. Town also agrees to pay for or reimburse Employee for fees necessary to maintain professional licenses in possession of Employee.

7.2 Professional Development.

(a) Town agrees to pay travel and subsistence expenses of Employee, subject to the City's travel policy, for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Town including, but not limited to, the annual conferences of the International City Management Association, the League of California Cities City Managers' Department Meeting and other such national, regional, state and local government groups and committees on which Employee serves as a member, provided such travel and membership is approved by the Town Council.

(b) Town also agrees to pay travel and subsistence expenses of Employee for short courses, institutes and seminars necessary for Employee's professional development and the good of the Town, provided such activities are approved by the Town Council.

7.3 Other Terms. The Town Council, in consultation with Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are reduced to writing and signed by Employee and the Town Council.

7.4 No Singular Reduction of Benefits. Town shall not during the term of this Second Amended Agreement reduce the base salary or other financial benefits of Employee, except to the degree that such reduction is applied across-the-board to all Department Heads, or as agreed to by the Employee, and/or except to the extent that they are inconsistent with the provisions hereof, in which case the provisions hereof shall govern.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Second Amended Agreement represents the entire agreement between the parties and supersedes any and all other agreement, either oral or in writing, between the parties with respect to Employee's employment by Town, including the Prior Contract, and contains all of the covenants and agreements between the parties with respect to such employment. No ordinances or resolutions of Town governing employment, including the City's Personnel System, shall apply unless specified herein. Each party to this Second Amended Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, that are not embodied herein, and that no other agreement, statement or promises not contained in this Second Amended Agreement shall be valid or binding upon either party.

8.2 Notices. Any notice required or permitted by this Second Amended Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To Town:

Attn: Mayor
Town of Yucca Valley
57090 Twentynine Palms Highway
Yucca Valley, CA 92284

To Employee:

Mark Nuaimi
4932 Toronto Avenue
Fontana, CA 92336

w/copy to:

Town Attorney
c/o Aleshire & Wynder, LLP
18881 Von Karman Ave, #400
Irvine, CA 92612

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.3 Conflicts Prohibited. During the term of this Second Amended Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict in any manner, with the proper discharge of Employee's duties under this Second Amended Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on the Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

8.4 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Second Amended Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.5 Partial Invalidity. If any provision in this Second Amended Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.6 Governing Law. This Second Amended Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution.

8.7 Indemnification. Town shall defend, indemnify and hold harmless Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Second

Amended Agreement, the First Amendment and Original Agreement. The Town may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This section shall not apply to any intentional tort or crime committed by Employee, to any action resulting from fraud, corruption or malice of Employee, to any action outside the course and scope of the services provided by Employee under the Second Amended Agreement, the First Amendment and Original Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

8.8 Independent Legal Advice. Town and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Second Amended Agreement. Town and Employee further represent and warrant that each has carefully reviewed this entire Second Amended Agreement, and that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Second Amended Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

8.9 Assignment. Neither this Second Amended Agreement, nor any right, privilege, nor obligation of Employee hereunder, shall be assigned or transferred by Employee without the prior written consent of the Town. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Town, be null and void and may be considered a material breach hereof.

8.10 Bonding. Town shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Town of Yucca Valley has caused this Second Amended Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Town Clerk, and Employee has signed and executed this Second Amended Agreement, the day and year below written.

TOWN OF YUCCA VALLEY

Mayor Merl Abel

MARK NUAIMI

Mark Nuaimi

ATTEST:

Town Clerk

APPROVED AS TO FORM

Lona N. Laymon, Town Attorney

TOWN OF YUCCA VALLEY
SECOND AMENDED & RESTATED EMPLOYMENT AGREEMENT
For the Position of
TOWN MANAGER

This SECOND AMENDED & RESTATED EMPLOYMENT AGREEMENT ("Second Amended Agreement") is entered ~~into this 17th~~^{5th} day of ~~June, 2010~~^{February, 2013}, by and between the TOWN OF YUCCA VALLEY ("Town"), a California general law Town and municipal corporation, and MARK NUAIMI ("Employee"), an individual.

RECITALS

WHEREAS, it is the desire of the Town Council of the Town of Yucca Valley (hereinafter the "Town Council") to employ an individual to serve in the position of Town Manager, which position is prescribed by state law and the City's Municipal Code; and

WHEREAS, on June 6, 2010, Employee was hired for the position of Town Manager pursuant to an "Employment Agreement" executed June 17, 2010 (the "Original Agreement"). On May 17, 2011, the Original Agreement was amended to increase the amount of Employee's contribution towards the cost of retirement from 2% to 8%, resulting in a reduced cost to the Town and a decrease in total compensation to Employee ("First Amendment"). There have been no other amendments to the Original Agreement or First Amendment since.

WHEREAS, it is the desire of the Town Council to (i) ~~secure and retain~~ the services of Employee after having ~~conducted a competitive selection process~~^{competently served the Town} since July 6, 2010, (ii) have Employee perform all of the regular functions of the Town Manager pursuant to the codes and regulations of Town, (iii) ~~to~~ provide inducement to Employee to maintain such employment, and (iv) to establish the terms and conditions of Employee's services to the Town through this Second Amended Agreement; and

WHEREAS, Employee has the necessary level of education, having earned a Master's Degree in Business Administration from the University of ~~LaVerne~~^{La Verne} and a bachelor's degree in electrical engineering from California State Polytechnic University, Pomona; and

WHEREAS, Employee has demonstrated the requisite skills and expertise to fulfill such position during the over two years of service with the Town, along with the practical experience by serving as Assistant City Manager for over three years with the City of Colton, serving in an elected capacity as Mayor/Councilman for over thirteen years with the City of Fontana, and Employee desires to ~~accept~~^{maintain} employment ~~from~~^{with} the Town.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, Town and Employee hereby agree as follows:

A G R E E M E N T

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1.0 EMPLOYMENT & DUTIES

1.1 Duties. Town hereby employs Employee as Town Manager for the Town to perform the functions and duties of that position, as described in the Yucca Valley Municipal Code, and to perform such other duties and functions as the Town Council shall from time to time assign. Employee acknowledges that his duties shall include services to the Successor Agency to the Yucca Valley Redevelopment Agency since the Town Manager also ~~servesserved~~ as the Redevelopment Agency's Executive Director. Employee further agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position. Employee acknowledges that proper performance of the duties of the Town Manager will often require the performance of necessary services outside of normal business hours. However, the Town intends that reasonable time off be permitted to Employee, such as is customary for exempt management employees, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities.

(a) Employee shall focus his or her professional time, ability, and attention to Town business during the term of this Second Amended Agreement.

(b) Employee shall not engage, without the express prior written consent of the Town Council, in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the Town, that might cause a conflict-of-interest with the Town, or that otherwise might interfere with the business or operation of the Town or the satisfactory performance of Employee's duties as Town Manager.

(c) The Employee understands the Town Council belief that Employee's position as Town Manager shall require significant time, attention, and focus of priority such that it is not possible for Employee to fulfill his obligations as Town Manager while serving in any elected or appointed capacity for another governmental agency. ~~Therefore, the Employee shall resign from his current elected position as Mayor of Fontana, appointed position with the San Bernardino Associated Governments (SANBAG), and appointed position with the San Bernardino Local Agency Formation Commission (LAFCO), concurrent to assuming the duties as Town Manager.~~

1.4 Employment Status. Employee shall serve at the will and pleasure of the Town Council under this Second Amended Agreement and understands he is an "at-will" employee serving at the pleasure of Town Council and subject to termination by the Town at any time, as set forth in Section 3.3 below.

1.5 Town Documents. All data, studies, reports, and other documents prepared by Employee while performing his duties during the term of this Second Amended Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Second Amended Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials shall not, without the prior written consent of the Town Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Second Amended Agreement, except as required by law.

1.6 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Second Amended Agreement, Employee shall be compensated One Hundred and Ninety Thousand and 00/100 Dollars (\$190,000.00) annually ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Deferred Compensation. Town agrees to pay an amount ~~equal~~ according to ~~Ten Thousand and 00/100 Dollars (\$10,000.00)~~ the following payment schedule on Employee's behalf into a qualified 401(a) plan established by the Town. ~~Such payment shall be made to Employee's account on January 8, 2011, and annually thereafter during the term of the Employee's employment as Town Manager, unless Town elects, with employees consent, to pay this directly to Employee as current salary.:~~

- (a) Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500) on 1/8/13;
- (b) Fifteen Thousand and 00/100 Dollars (\$15,000) on 1/8/14;
- (c) Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500) on 1/8/15;
- (d) Twenty Thousand and 00/100 Dollars (\$20,000) on 1/8/16.

Such payment shall be made to Employee's account during the term of the Employee's employment as Town Manager, unless Employee elects, with Town's consent, to pay this directly to Employee as current salary.

2.3 Cost of Living Increase. ~~If approved by the Town Council~~ In exchange for increased deferred compensation schedule, Town ~~may~~ will not be required to provide a cost of living adjustment in Employee's base salary. ~~If such increase is approved by the Town Council it shall be given to Employee at throughout the same time as other Department Heads of the Town.~~ term of this Second Amended Agreement.

2.4 Annual Salary Review. The Town Council ~~and Employee agree~~ has the right, but not the obligation, to conduct an annual salary review, ~~commencing January 2012 and of~~

Employee concurrently with the annual performance evaluation set forth in Section 5.2. ~~Any action to approve an increase must be approved by~~The Employee agrees to a majority vote of the Council at a public meetingfreeze in Salary (as defined above) for the duration of this Second Amended Agreement.

2.5 Reimbursement. Notwithstanding Section 2.6, Town shall reimburse Employee for reasonable and necessary travel greater than 75 miles from Yucca Valley, subsistence, and other business expenses incurred by Employee in the performance of his duties. There shall be no reimbursement for commuting-relating travel expenses. All reimbursements shall be subject to and in accordance with California law and the ~~City's~~Town's adopted Employee Reimbursement Policy.

2.6 Automobile Allowance. Employee's duties require the extensive use of an automobile in the normal course of business. Accordingly, Employee shall receive an automobile allowance of up to Six Hundred Dollars (\$600) monthly to be paid when the other Department Heads receive their automobile allowances. Both parties acknowledge that it will be occasionally necessary for Employee to utilize a 4-wheel drive Town-owned pool car to access areas of Yucca Valley or the surrounding communities and use of such a vehicle shall not affect Employee's automotive allowance.

3.0 TERM

3.1 Commencement & Effective Date. ~~Employee shall commence his services hereunder on July 6, 2010~~This Second Amendment shall commence on February 5th, 2013. Certain provisions of this Agreement require an effective date of July 1, 2012. This Second Amended Agreement restates and supersedes the Original Agreement and First Amendment.

3.2 Term. ~~This Second Amended Agreement is not for any specific term and shall be considered as continuing for as long as the Town wishes to employ Employee. At the Town's option, at any time while this Agreement is remain in effect, the Town Council may fix a term of any length at~~ until June 30, 2016, at the conclusion of which this Second Amended Agreement shall automatically terminate. —The Term of this Second Amended Agreement may be extended upon mutual concurrence from the Town and the Employee.

3.3 Termination by Town Council or Employee. The Town Council may terminate this Second Amended Agreement at any time with or without cause and without prior notice or hearing. Employee may terminate this Second Amended Agreement at any time following commencement of services, with or without cause, upon at least one hundred twenty (120) days' written notice before the effective date of termination of the Second Amended Agreement, unless a shorter period is acceptable to the Town.

3.4 Definition of Cause. For the purposes of this Second Amended Agreement, "cause" for termination shall include, but not be limited to, the following: theft or attempted theft, financial mismanagement, material dishonesty, willful or persistent material breach of duties, engaging in unlawful discrimination or harassment of employees or any third party while on Town premises or time, conviction of a felony, engaging in conduct tending to bring

embarrassment or disrepute to the Town, unauthorized or excessive absences, willful misconduct as defined in Yucca Valley Municipal Code § 2.08.100, or similar matters.

3.5 Waiver of Certain Termination Rights. Employee expressly waives any rights provided under the City's Personnel System or Policies, and any rights provided to the Town Manager under the Yucca Valley Municipal Code or under State or Federal law to any form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, except those rights Employee may have under the California or Federal Constitutions to a name-clearing hearing.

4.0 SEVERANCE

4.1 Severance. In the event the Town terminates this agreement Second Amended Agreement for cause, Employee shall have the severance rights provided in Yucca Valley Municipal Code § ~~2.08.090~~, except as otherwise specifically provided in this Article 4.0. Section 2.08.090 and this Article shall constitute the sole and only entitlement of Employee in the event of termination for cause, and Employee expressly waives any and all other rights except as provided herein. Nothing in this paragraph shall be construed as precluding Employee's right to contest the appropriateness of termination in San Bernardino Superior Court or any court of competent jurisdiction or otherwise enforce the provisions of this Second Amended Agreement.

(a) Severance Pay. In the event of termination of Employee by the Town without cause, the Town shall provide the Employee with: (1) ~~Six (6)~~ Eight (8) months Salary; and (2) ~~continuation of Employee's health benefits as of the time of termination, for twelve (12) months or until Employee finds other employment, whichever occurs first.~~ The Salary severance payment required under this subparagraph shall be increased by one (1) month on an annual basis, beginning January 8, ~~2012~~ 2014, except that under no circumstances shall the total Salary severance payment exceed twelve (12) months.

~~(b) Termination Without Cause Within First Year. If the Town Council terminates the Employee without cause before the expiration of the first year of this Agreement (i.e., on or before July 6, 2011), the Town shall not be required to make the severance payment provided herein.~~

~~(c) Termination Without Cause in the Six Months Following an Election. Notwithstanding Section 4.1(b), if at the November 2, 2010, Yucca Valley Municipal Election three new members of the Town Council are elected, and if the Town Council gives notice to terminate the Employee without cause before the expiration of the first year of this Agreement (i.e., on or before July 6, 2011), the Employee shall be entitled to Severance Pay as defined in Section 4.1(a).~~

~~(b) Application of Government Code Section 53260. Provisions. Notwithstanding any other provision of this Second Amended Agreement, the following State law restrictions upon Employee's Salary and benefits shall take precedent:~~

~~(d)a. Government Code Section 53260 provides that all contracts of employment with a Town must include a provision limiting the maximum cash~~

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settlement for the termination of the contract to the monthly ~~salary~~Salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. The severance payments provided for in this Article 4.0 are so limited by this provision and under no circumstances may any severance payment be made to Employee except after amendment of this Article 4.0.

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b. If this Second Amended Agreement provides for: (1) paid leave for the official pending an investigation; (2) funds for the legal criminal defense of the official, or (3) any cash settlement related to Employees' termination, such sums shall be fully reimbursed by Employee to the Town if the Employee is convicted of a crime involving abuse of his or her office or position. All provisions of Government Code § 53243.3 shall take precedence over the terms of this Second Amended Agreement.

c. Notwithstanding any other provisions of this Second Amended Agreement, it shall be prohibited for this Second Amended Agreement to provide an automatic renewal hereof that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits. Government Code § 3511.2 is hereby incorporated into the terms of this Second Amendment as follows:

"On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5" (i.e., a cash settlement that exceeds 18 months of the Salary and benefits).

(e)(c) No Severance Pay if Termination Initiated by Employee. Employee expressly agrees that he shall not be entitled to any severance payment as the result of the termination of this Second Amended Agreement if such termination is initiated by Employee.

4.2 Payment. Half of any severance payment required under this Article shall be paid within ten (10) days of termination. The balance of the ~~salary~~Salary payment shall be paid monthly following ninety (90) days following the date of separation.

5.0 PERFORMANCE EVALUATIONS.

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the Town. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.4 above), nor shall this Section 5.0 be construed as

requiring "cause" to terminate this Second Amended Agreement, or the services of Employee hereunder.

5.2 Annual Evaluation. The Town Council shall conduct a review and evaluate the performance of Employee on an annual basis, commencing January 8, ~~2011~~2014 and annually thereafter during the term of the Employee's employment as Town Manager. The review and evaluation shall be in accordance with specific criteria developed jointly by the Town Council and Employee. The evaluation shall be predicated on such criteria, as well as any other deemed appropriate by the Town Council, provided it is communicated in writing to Employee. Thereafter, the Town Council shall provide Employee with a written summary statement of the performance evaluation and shall provide an opportunity for Employee to discuss the contents thereof with him for the purpose of improving the overall effectiveness of Employee in his position, including an opportunity for Employee to comment on the evaluation should Employee so elect.

5.3 Goals and Objectives. Annually, the Town Council and the Employee shall define goals and performance objectives that they determine are necessary for the proper operation of the Town and, in the attainment of the Town Council's policy objectives, shall further establish a relative priority among those various goals and objectives. The goals and objectives shall be reduced to writing. The goals and objectives shall be generally obtainable within the time limitations as specified and the annual operating and capital budgets and appropriations as provided.

6.0 FRINGE BENEFITS AND OTHER COMPENSATION.

6.1 Annual Leave, Commencing

(a) Vacation – Employee currently accrues vacation at a rate equivalent to Eighty (80) Hours per year (which accrual shall be consistent with the effective dateTown's adopted vacation accrual policy). Effective July 6, 2013, the rate of this Agreement, Employee accrual will increase to fifteen (15) days of vacation per year, 4.62 hours accrued per pay period.

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(b) Paid Time Off (PTO) Leave -- Effective July 1, 2012, the Employee shall receive One Hundred Sixty (160) hours of PTO Leave per fiscal year. Town Council may elect to reduce PTO to Eighty (80) hours upon determination by a majority of the Council that the Employee's efforts don't warrant additional award of PTO. Such determination shall be included in the Annual Performance Evaluation.

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~~6.1(c) Employee shall accrue on the same basis as other Town Management Employees the maximum level of vacation days, sick leave, holiday, admin leave and other benefits as given in an equal number to other Department Heads of the Town. Employee shall be credited upon the effective date of this Agreement with eighty (80) hours vacation time and eighty (80) hours sick leave.~~

6.2 Health and Life Insurance. Town agrees to put into force and to make such premium payments for Employee for insurance policies for life, accident, sickness, dental, vision, short and long-term disability income benefits, major medical and dependents' coverage group insurance covering Employee and his dependents to the same level as the other

Management Employees receive. Notwithstanding the forgoing, the Town agrees that the life insurance provided for the benefit of the Employee's beneficiaries shall be term life insurance in an amount equal to two times (2x) Employee's annual base salary plus deferred compensation.

6.3 Other Benefits.

(a) Employee shall receive the same PERS benefit provided to non-sworn department heads. Employee agrees to pay eight percent (8%) towards the employee portion of the PERS premiums. The amount of Employee's share toward PERS benefit shall be set at the same amount as other non-sworn department heads.

(b) Except as otherwise described in this Article 6, Town agrees to give the Employee all other benefits that are given to other Town Department Heads generally.

7.0 OTHER TERMS – CONDITIONS OF EMPLOYMENT

7.1 Dues, Subscriptions and License Fees. Town agrees to pay for the professional dues and subscriptions necessary for Employee's full participation in national, state, regional and local associations and organizations necessary and desirable for his professional participation, growth and advancement, and for the good of the Town. Town also agrees to pay for or reimburse Employee for fees necessary to maintain professional licenses in possession of Employee.

7.2 Professional Development.

(a) Town agrees to pay travel and subsistence expenses of Employee, subject to the City's travel policy, for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Town including, but not limited to, the annual conferences of the International City Management Association, the League of California Cities City Managers' Department Meeting and other such national, regional, state and local government groups and committees on which Employee serves as a member, provided such travel and membership is approved by the Town Council.

(b) Town also agrees to pay travel and subsistence expenses of Employee for short courses, institutes and seminars necessary for Employee's professional development and the good of the Town, provided such activities are approved by the Town Council.

7.3 Other Terms. The Town Council, in consultation with Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are reduced to writing and signed by Employee and the Town Council.

7.4 No Singular Reduction of Benefits. Town shall not during the term of this Second Amended Agreement reduce the base salary or other financial benefits of Employee, except to the degree that such reduction is applied across-the-board to all Department Heads, or as agreed to by the Employee, and/or except to the extent that they are inconsistent with the provisions hereof, in which case the provisions hereof shall govern.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Second Amended Agreement represents the entire agreement between the parties and supersedes any and all other agreement, either oral or in writing, between the parties with respect to Employee's employment by Town, including the Prior Contract, and contains all of the covenants and agreements between the parties with respect to such employment. No ordinances or resolutions of Town governing employment, including the City's Personnel System, shall apply unless specified herein. Each party to this Second Amended Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, that are not embodied herein, and that no other agreement, statement or promises not contained in this Second Amended Agreement shall be valid or binding upon either party.

8.2 Notices. Any notice required or permitted by this Second Amended Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To Town:

Attn: Mayor
Town of Yucca Valley
57090 Twentynine Palms Highway
Yucca Valley, CA 92284

To Employee:

Mark Nuaimi
4932 Toronto Avenue
Fontana, CA 92336

w/copy to:

Town Attorney
c/o Aleshire & Wynder, LLP
18881 Von Karman Ave, #400
Irvine, CA 92612

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.3 Conflicts Prohibited. During the term of this Second Amended Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict in any manner, with the proper discharge of Employee's duties under this Second Amended Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on the Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

8.4 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Second Amended Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.5 Partial Invalidity. If any provision in this Second Amended Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.6 Governing Law. This Second Amended Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution.

8.7 Indemnification. Town shall defend, indemnify and hold harmless Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Second

Amended Agreement, the First Amendment and Original Agreement. The Town may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This section shall not apply to any intentional tort or crime committed by Employee, to any action resulting from fraud, corruption or malice of Employee, to any action outside the course and scope of the services provided by Employee under ~~this~~ the Second Amended Agreement, the First Amendment and Original Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

8.8 Independent Legal Advice. Town and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Second Amended Agreement. Town and Employee further represent and warrant that each has carefully reviewed this entire Second Amended Agreement, and that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Second Amended Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

8.9 Assignment. Neither this Second Amended Agreement, nor any right, privilege, nor obligation of Employee hereunder, shall be assigned or transferred by Employee without the prior written consent of the Town. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Town, be null and void and may be considered a material breach ~~of this Agreement hereof.~~

8.10 Bonding. Town shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Town of Yucca Valley has caused this Second Amended Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Town Clerk, and Employee has signed and executed this Second Amended Agreement, the day and year below written.

TOWN OF YUCCA VALLEY

Mayor ~~Chad Mayes~~ Merl Abel

MARK NUAIMI

Mark Nuaimi

ATTEST:

Town Clerk

APPROVED AS TO FORM

Lona N. Laymon, Town Attorney

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Chief Executive Compensation Comparison

1/31/2013

Town of Yucca Valley												
	Annual Salary	Auto Allowance	Phone stipend	Accrued Vacation *	Accrued Sick	PTO	Employee PERS contribution	Employer PERS contribution	Annual Deferred comp	Insurance Benefits	Retirement Benefit	Contracted
TOTAL COMP												
Mark Nuaimi												
Yucca Valley - Current	\$ 190,000.00	600/mo	115/mo	3.08 hrs/pp	3.70 hrs/pp	80 hr/yr	0%	18.586%	\$ 10,000.00	1050/mo	2.7% @ 55	Y
\$ 279,878.02		\$ 7,200.00	\$ 1,380.00	\$ 7,307.69	\$ 8,769.23	\$ 7,307.69	\$ -	\$ 35,313.40		\$ 12,600.00		
Yucca Valley - Recommended	\$ 190,000.00	600/mo	115/mo	4.65 hrs/pp	3.70 hrs/pp	160 hr/yr	0%	18.586%	\$ 12,500.00	1050/mo	2.7% @ 55	Y
\$ 293,339.55		\$ 7,200.00	\$ 1,380.00	\$ 10,961.54	\$ 8,769.23	\$ 14,615.38	\$ -	\$ 35,313.40		\$ 12,600.00		
High Desert Water District												
General Manager	\$ 195,998.00	900/mo	65/mo	9.846 hrs/pp	Vacation/sick combined	40 hr/yr	4%	19.885%	N/A	624/mo	2.5% @ 55	Y
\$ 289,772.15		\$ 10,800.00	\$ 780.00	\$ 24,122.83		\$ 3,769.19	\$ 7,839.92	\$ 38,974.20		\$ 7,488.00		
City of Twentynine Palms												
City Manager	\$ 171,496.00	500/mo	175/mo	4.65 hrs/pp	3.70 hrs/pp	80 hr/yr	8%	18.478%	8%	1400/mo (est)	2.5% @ 55	Y
\$ 279,929.59		\$ 6,000.00	\$ 2,100.00	\$ 9,894.00	\$ 7,915.20	\$ 6,596.00	\$ 13,719.68	\$ 31,689.03	\$ 13,719.68	\$ 16,800.00		
Desert Hot Springs												
City Manager	\$ 217,000.00	850/mo	175/mo	4.65 hrs/pp	3.70 hrs/pp	80 hr/yr	4%	18.478%	0%	1400/mo (est)	2.5% @ 55	Y
\$ 325,758.03		\$ 10,200.00	\$ 2,100.00	\$ 12,519.23	\$ 10,015.38	\$ 8,346.15	\$ 8,680.00	\$ 40,097.26	\$ -	\$ 16,800.00		
Barstow												
City Manager	\$ 236,990.00	500/mo	115/mo	4.65 hrs/pp	3.70 hrs/pp	90 hr/yr	4%	18.500%	6%	1000/mo	2.7% @ 55	Y
\$ 366,399.03		\$ 6,000.00	\$ 1,380.00	\$ 13,672.50	\$ 10,938.00	\$ 10,254.38	\$ 9,479.60	\$ 43,843.15	\$ 14,219.40	\$ 19,622.00		
Adelanto												
City Manager	\$ 210,000.00	500/mo	115/mo	4.65 hrs/pp	3.70 hrs/pp	80 hr/yr	7%	6.000%	2%	500/mo (est)	2.0% @ 60	Y
\$ 284,764.62		\$ 6,000.00	\$ 1,380.00	\$ 12,115.38	\$ 9,692.31	\$ 8,076.92	\$ 14,700.00	\$ 12,600.00	\$ 4,200.00	\$ 6,000.00		
Big Bear Lake												
City Manager	\$ 221,000.00	500/mo	115/mo	4.65 hrs/pp	3.70 hrs/pp	80 hr/yr	4%	23.217%		1400/mo (est)	2.0% @ 55	Y
\$ 342,084.57		\$ 6,000.00	\$ 1,380.00	\$ 12,750.00	\$ 10,200.00	\$ 8,500.00	\$ 7,735.00	\$ 51,309.57	\$ 10,000.00	\$ 13,210.00		
Banning												
City Manager	\$ 217,000.00	500/mo	175/mo	4.65 hrs/pp	3.70 hrs/pp	80 hr/yr	8%	17.452%	0%	1400/mo (est)	2.5% @ 55	Y
\$ 338,011.61		\$ 6,000.00	\$ 2,100.00	\$ 12,519.23	\$ 10,015.38	\$ 8,346.15	\$ 17,360.00	\$ 37,870.84	\$ 10,000.00	\$ 16,800.00		

Sources: League of California Cities Salary Survey; Agency websites; SB Sentinel article (January 2012)