

**TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING MINUTES
May 6, 2014**

OPENING CEREMONIES

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

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

Staff Present: Deputy Town Manager Stueckle, Administrative Services Director Yakimow, Police Lieutenant Wilke, Town Attorney Laymon, and Town Clerk Copeland

The Pledge of Allegiance was led by Mayor Lombardo

PRESENTATIONS

1. San Bernardino County Sheriff's Department- HOPE Program

A presentation was given, explaining the San Bernardino County's H.O.P.E. Program (Homeless Outreach Proactive Enforcement). The program represents a different approach in addressing homelessness in the county, including the Morongo Basin. Sheriff McMahan implemented the Homeless Outreach and Proactive Enforcement program to help improve the quality of life for the citizens of San Bernardino County. The mission of H.O.P.E. is to balance proactive outreach with enforcement of the law, while connecting members of the homeless population with resources that may help them transition from homelessness. The ultimate goal is to reduce the rate of recidivism, and incarceration, and to reduce the current costs associated with homeless related crime.

The San Bernardino County Sheriff's Department also asks local residents to be aware of the County's anti-panhandler campaign "Positive Change, Not Spare Change" by not supporting panhandlers but instead give to a charity that can provide the needed services to the homeless population.

Council Member Leone commented favorably on the program.

Mayor Pro Tem Huntington inquired on the program's presence in the Morongo Basin.

2. San Bernardino County Fire- Battalion Chief Introduction

San Bernardino County Fire Division Chief Dave Benfield introduced Battalion Chief Tom Marshall, assigned to the South Desert Division.

3. Town of Yucca Valley Employee of the Quarter

Town Senior Accountant Cisneros introduced Shirlene Doten as the Town's employee of the first quarter for 2014.

APPROVAL OF AGENDA

Deputy Town Manager Stueckle requested that Item No. 14 be moved to Item No.10a and Item No. 10 be moved to Item No. 10b.

Mayor Pro Tem Huntington moved to approve the amended agenda for the Regular Town Council Meeting of May 6, 2014. Council Member Leone seconded. Motion carried 5-0 on a roll call vote.

- AYES:** Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

CONSENT AGENDA

- 4. **Waive** further reading of all ordinances and read by title only
- 5. **Approve** the Town Council meeting minutes for the regular meeting of April 15, 2014 as presented
- 6. **Adopt** Ordinance No. 248, removing Town Code provisions in conflict with the Manual of Procedural Guidelines and accurately referencing provisions between Town Code and the Manual of Procedural Guidelines.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY AMENDING SECTIONS OF CHAPTER 2.05 AND TITLE 4 REFERRING TO THE PROCEDURES FOR TOWN COUNCIL AND COMMITTEE MEETINGS AND COMMISSION APPOINTMENTS AND REPEALING CHAPTER 4.02 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE RELATING TO BOARD AND COMMISSION MEMBERS

- 7. **Adopt** Ordinance No. 249, amending Title 12, Chapter 12.20 of the Town of Yucca Valley Municipal Code, Section 12.20.020, Entitled “Changes in State Law Speed Limits” by establishing the recommended speed limits, and rescinding that portion of the Ordinance that establishes the existing speed zones.

AN ORDINANCE OF THE TOWN OF YUCCA VALLEY, CALIFORNIA,AMENDING TITLE 12 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE BY AMENDING SECTION 12.20.020 ENTITLED “CHANGES IN STATE LAW SPEED LIMITS” OF

CHAPTER 12.20 OF THE TOWN OF YUCCA VALLEY MUNICIPAL CODE ESTABLISHING SPEED LIMITS

- 8. **Adopt** Resolution No. 14-12 appointing Christy Marie Lopez as Assistant Town Attorney
- 9. **Ratify** the Payroll Register total of \$121,257.51 dated April 11, 2014.
Ratify Warrant Register total of \$355,121.86 for checks dated April 17, 2014.

Mayor Lombardo opened public comment for items on the Consent Agenda. With no members of the public wishing to speak, Mayor Lombardo closed public comments.

Council Member Abel moved to approve consent agenda items 4-9. Mayor Pro Tem Huntington seconded. Motion carried 5-0 on roll call vote.

AYES: Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

DEPARTMENT REPORTS

10a. Brehm Park Ad Hoc Committee Recommendation

Deputy Town Manager presented the staff report, explaining that the Brehm Park Ad Hoc Committee met with Basin Wide Foundation over the past several months to discuss the Brehm Park facility transition provisions.

Over-arching provisions brought forward by the Ad-Hoc Committee for Council’s consideration to transition the facility as of July 1, 2014, the Town of Yucca Valley will become the owners of the park facility, Basin Wide Foundation to complete playground equipment installation, fall surface and playground equipment shade sails, Town to complete the west parking lot and Palm Street improvements. The Town is also to provide \$10,000 annually for low income youth sports participation program for 10 years, with the opportunity for Basin Wide Foundation to request a 5-year extension. Basin Wide Foundation will also have the opportunity to complete a roller-derby flat track.

Mayor Lombardo opened public comments.

City Melland, Basin Wide Foundation spoke in favor of the provisions presented and thanked the Ad-Hoc Committee and staff for their support in the process. Melland spoke of the many volunteers involved with making the park a beautiful asset in the community.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Council Member Rowe spoke in favor of the Town acquiring the park and asked about the provisions of low income grants, and if there could be a priority for Yucca Valley residents when using these funds for activity fees. Rowe also inquired on the cost of improvement provisions.

Mayor Pro Tem Huntington thanked the Brehm Family for the contribution to the community.

Council Member Leone also thanked the Brehm Family for a beautiful facility.

Mayor Lombardo spoke of park amenities and stated the facility would be a highlight in the Town's park inventory.

Council Member Rowe moved to accept the Brehm Park Ad Hoc Committee with two modifications: 1) The General Fund expenditures for the Youth Sports Participation Program, include prioritization given to Town of Yucca Valley residents, and 2) staff return back to the Town Council with a transition process beginning July 1, 2014 with recommendations of delivering future amenity projects at the lowest possible cost to the community which includes private donations as well as public tax payers dollars. Mayor Pro Tem Huntington seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

**10b. State Safe Routes to School Grant Funds (SR2S)
Sage Avenue Safe Route to School (SR2S) Improvements – Town Project No. 8320
Reject all Bids and Re-advertise**

Project Engineer Qishta presented the staff report, reviewing the original project scope and the bidding process for the Safe Routes to School Improvement project. Qishta explained that the lowest bid came in approximately 29 percent over the engineer's estimate. Suggested project modifications were discussed, including the elimination of the sidewalk construction along the east side of Sage and the elimination of the flashing beacon at the corner of Sage Avenue and Pueblo Trail.

Mayor Lombardo opened public comment. With no members of the public wishing to speak, public comments were closed.

Council Member Leone commented favorably on rejecting the bids and modifying the scope of the project.

Council Member Abel inquired about the cost of including a crosswalk across Sage at Pueblo, with a flashing warning light.

Deputy Town Manager Stueckle explained that if a crosswalk was installed, ADA compliance components will need to be addressed. If there are enough grant funds remaining, further evaluation can be conducted on this.

Mayor Pro Tem Huntington stated he understands the need to reject the bids and is in favor of including a crosswalk and flashing warning light at the Sage/Pueblo intersection.

Council Member Abel moved to

- Reject all bids received on April 24, 2014, for Project No. 8320;
- Authorize the Town Clerk to return all Bid Bonds to all bidders;
- Authorize the Town Clerk to re-advertise and solicit bids for the project with an opening date of May 29, 2014

Council Member Rowe seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

**11. Town Council Direction to Staff
 Mojave Desert Air Quality Management District (MDAQMD)
 Release of AB 2766 Grant Funds for Construction of a SAE J1772 Standard
 Charging Station.**

Project Engineer Qishta presented the staff report stating that the Town of Yucca Valley has the opportunity to receive grant funding through the Mojave Desert Air Quality Management District (MDAQMD) with the release of AB2766 funds. One option that the Town may use these funds, is to install an electric vehicle charging station. The ongoing cost of electricity and whether to pass along these costs to the consumer is to be considered. Other administrative costs are also possible, if the Town chooses to accept credit cards at the charging station. Installation costs were reviewed.

Deputy Town Manager Stueckle provided additional discussion points, such as the life span of the equipment and the number of possible users.

Mayor Lombardo opened public comment. With no members of the public wishing to speak, public comments were closed.

Council Member Leone spoke of the benefits of electric car use and the increasing number of consumers using these types of vehicles.

Council Member Rowe inquired if any members of the public have requested such a facility, and if Town staff has determined the need for the service.

Council Member Abel stated that after his research on the electric car use, it may not be the best use of these available funds. In our area, the longer travel commutes may hinder the usability of a public charging station. Abel suggested staff bring back other air quality-type projects such as dust control for consideration.

In response to Council Member Rowe's inquiry, Project Engineer Qishta commented that he has been in contact with City of Twentynine Palms staff, and there is one consistent user at the public charging station in Twentynine Palms.

Council Member Leone moved to direct staff to research alternative, air quality-type programs for use with AB 2766 funding. Council Member Abel seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

12. FY 2014-15 & FY 2015-16 Preliminary Special Revenue Funds Budget

Administrative Services Director Yakimow presented the staff report, giving an overview of the FY 2014-15 and 2015-16 Preliminary Special Revenue Funds Budget. The Special Revenue Funds are utilized to account for proceeds derived from specific revenue sources which may be legally restricted to expenditures for specified purposes. The proposed special revenue funds budgets total is just under \$10 million in expenditures with the majority as a result of the Town's efforts in securing external revenue sources. These outside sources include grant funds, federal transportation funds, state transportation funds, block grants and a variety of smaller non-discretionary funding programs.

Mayor Lombardo opened public comments. With no members of the public wishing to speak, public comments were closed.

Council Member Leone stated he would like something allocated for traffic safety.

Mayor Pro Tem inquired on the vehicle replacement reserves with provisions allocated in both the gas tax fund and the vehicle replacement fund. Yakimow responded that if the equipment would fall into the specific role of road maintenance, certain expenses would be appropriately charged to the gas tax fund.

Mayor Lombardo commented on the cost of keeping our roads maintained at the current level. Deputy Town Manager Stueckle provided additional information, stating that to

maintain road maintenance at the current level; an additional \$600-\$700 thousand is needed. This does not address the reconstruction needs on those roads that are in complete disrepair.

Council Member Abel moved to receive and file the preliminary fiscal year 2014-15 and 2015-16 special revenue funds budget with no modifications at this time. Mayor Pro Tem Huntington seconded. Motion carried 5-0 on a roll call vote.

- AYES:** Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

13. Five Year Capital Improvement Program (CIP) Preliminary Review

Project Engineer Qishta presented the staff report, explaining the five-year capital improvement program document as a planning tool for the expenditure of resources for public infrastructure. The program is a short-range, five-year plan which identifies capital projects, provides a planning schedule and identifies options for financing the program.

Qishta continued to provide a brief overview of each project and the suggested budget allocation for the 2014-15 fiscal year.

Mayor Lombardo opened public comments.

Charles McHenry, Yucca Valley spoke on the condition of Black Rock Canyon Road.

Fritz Koenig, Yucca Valley commented on the weight limits of local roads.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Council Member Leone suggested using heavy gravel on Black Rock Canyon Road.

Council Member Rowe stated she would like Black Rock Canyon Road paved and in good condition.

Council Member Abel commented on the many factors going into the decision of moving forward with improving Black Rock Canyon Road, including ongoing maintenance and risk concerns.

Mayor Lombardo spoke favorably of the projects presented in the report and would like to see funds set aside to improve the Hwy 62 alleyways and Pima Trail.

Deputy Town Manager Stueckle explained that moving forward with capital improvement projects is a complex and challenging task since the needs are often greater than the available funding.

Council Member Leone moved to receive and file the Five-Year Capital Improvement Program report. Council Member Abel seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

FUTURE AGENDA ITEMS

None stated.

PUBLIC COMMENTS

Mayor Lombardo opened public comments for items not on the agenda.

Ed Montgomery, Yucca Valley spoke of an ongoing code compliance case in his neighborhood.

Fritz Koenig, Yucca Valley spoke in agreement with Mr. Montgomery and also spoke of the adopting resolution for the Town's General Plan.

Cindy Melland, Yucca Valley thanked the Town Council for their support and comments given regarding the community involvement with the Brehm Park project.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

STAFF REPORTS AND COMMENTS

Deputy Town Manager Stueckle reported that the updated General Plan is up on the Town's website. In response to public comment, the resolution was stated correctly and no further action is necessary. Stueckle continued by giving a brief update on the code compliance case referenced by Mr. Montgomery.

Administrative Services Director Yakimow reminded the Town Council of the Spring Fling Dance scheduled for the following Saturday evening at the Senior Center. Yakimow reported that a Town press release was issued today to announce the budget workshop for Saturday, May 10, 2014 at 10:00 a.m. The public is encouraged to attend.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

11. Council Member Abel thanked the San Bernardino County Sheriff's Department for the informative presentation on the HOPE program. Abel also welcomed Tom Marshall as the area's new Battalion Chief. Congratulations were offered to Doten for her Employee of the Quarter award.
12. Council Member Leone congratulated Ms. Doten, welcomed Chief Marshall and the thanked the Sheriff's Department for developing the homeless outreach program. Leone reported that he will not be able to attend the budget workshop on May 10th; however he would like public safety to stay as a top priority.
13. Council Member Rowe thanked the Sheriff's Department for the presentation on the HOPE Program, welcomed Tom Marshall and congratulated Doten on her well-deserved award.
14. Mayor Pro Tem Huntington welcomed the new fire chief and thanked Doten for her hard work. Huntington also announced that the MCAGCC recently issued a press release announcing plans for a military exercise planned for May 17th. Residents may experience increased activity that day. The Give Big for San Bernardino County campaign continues and expressed that local non-profit groups will benefit from the donations.
15. Mayor Lombardo thanked the public for attending the meeting, welcomed the new fire chief, gave congratulations to Doten, and thanked the Sheriff Department's HOPE program for providing services to the area's homeless.

ANNOUNCEMENTS

The next meeting of the Yucca Valley Town Council will be held on Tuesday, May 20, 2014 at 6:00 p.m., in the Yucca Room of the Yucca Valley Community Center.

CLOSED SESSION

- 1. Conference with Legal Counsel – Anticipated Litigation**
- 2. Public Employee Appointment / Conference with Labor Negotiator (One Matter)**

Mayor Lombardo opened public comment on closed session items.

Fritz Koenig, Yucca Valley inquired why litigation item was not identified by case. Koenig requested that the Town Manager contract not include a severance clause, but use large performance bonuses instead.

Ed Montgomery, Yucca Valley commented on the Town Manager appointment process.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Town Attorney Laymon explained the Brown Act provisions for listing closed session items.

Mayor Lombardo adjourned to closed session at 8:35 p.m.

REPORT OUT FROM CLOSED SESSION - ADJOURNMENT

Town Attorney Laymon reported that closed session adjourned at 9:10 p.m. with no reportable action.

Respectfully Submitted,

Lesley Copeland, CMC
Town Clerk

**TOWN OF YUCCA VALLEY
TOWN COUNCIL SPECIAL MEETING MINUTES
May 10, 2014**

OPENING CEREMONIES

Mayor Lombardo called the special meeting to order at 9:05 a.m.

Council Members Present: Abel, Huntington, Rowe, and Mayor Lombardo. Leone was absent due to a planned vacation.

Staff Present: Deputy Town Manager Stueckle, Administrative Services Director Yakimow, Senior Accountant Cisneros, and Town Clerk Copeland

Deputy Town Manager Stueckle welcomed all in attendance and gave a brief overview of the meeting process.

DEPARTMENT REPORT

1. FY 2014-15 and 2015-16 Proposed Budget Update and Review

Administrative Services Director Yakimow presented the proposed budget, explaining fiscal impacts and the budget development process using Town Council's policy direction from the meeting of March 4, 2014. Anticipated revenues for the General fund are estimated at \$9.4 for fiscal year 2014-15 and \$9.7 million for fiscal year 2015-16. A summary of anticipated expenditures was also presented, including public safety, personnel services, operating supplies and services, and community partnerships.

Mayor Lombardo opened public comment.

Richard Harlan, Yucca Valley inquired about the Town Manager salary adjustment.

Bonnie Brady, Yucca Valley commented about the condition and repair status of the old PFF sign.

Deputy Town Manager Stueckle explained that as soon as the State approves the long-range property management plan, some level of action will be directed for the removal of the old sign.

Richard Harlan, Yucca Valley commented on the broken street sign at the Camino del Cielo signal along State Route 62.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Deputy Town Manager Stueckle explained that in the past several years, the Town Council's focus with the budget has been to reduce costs. Significant reductions have occurred during this time.

Council Member Abel agreed with Brady's comment regarding the old PFF sign. Abel also stated interest in possibly looking into adjusting the Town's reserve level to accommodate some of the Town's infrastructure needs. The Town's reserves are significantly higher than the standard public range, and though we don't want to drop too low, a one-time transfer might help to fix the local roads.

Council Member Rowe inquired about the reserve policy and if a change is recommended, how would the funding occur. Rowe stated that budget surplus from year to year should go toward specific line items for infrastructure and not swept into the reserves.

Mayor Pro Tem Huntington stated it is necessary to look for sustainable resources to meet the infrastructure needs and would like to see reserves stay where they are. Huntington thanked staff for a comprehensive draft budget.

Mayor Lombardo commended staff on keeping expenses in-line and sees a need for additional revenue since cutting expenses is not covering the infrastructure needs. Lombardo stated he would be in favor of seeing any surplus budget going toward infrastructure and not swept into reserves, but would like to keep reserves above the 50 percent mark.

Mayor Lombardo reopened public comment.

Richard Harlan, Yucca Valley spoke of road maintenance and the proposed sewer project.

Carey Harwin, Yucca Valley inquired on new equipment capabilities to take care of road maintenance in-house.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Deputy Town Manager Stueckle thanked Yakimow and Cisneros for the budget presentation and stated that the workshop will be repeated on May 20th at 5:00 p.m.

With no further business, Mayor Lombardo adjourned the special meeting at 10:15 a.m.

Respectfully Submitted,

Lesley Copeland, CMC
Town Clerk

TOWN OF YUCCA VALLEY
TOWN COUNCIL SPECIAL MEETING MINUTES
BUDGET WORKSHOP
May 20, 2014

OPENING CEREMONIES

Administrative Services Director Yakimow called the budget workshop to order at 5:00 p.m. and announced that the purpose of the meeting is to provide an informal opportunity for the public to discuss the Proposed FY 2014-15 and FY 2015-16 Budgets and if any member of the public wishes to address the council specifically, may do so at the formal public hearing later in the evening.

Council Members present in the audience: Leone, Huntington, Rowe, and Mayor Lombardo.

Staff Present: Deputy Town Manager Stueckle, Administrative Services Director Yakimow, Senior Accountant Cisneros, and Town Clerk Copeland

1. FY 2014-15 and 2015-16 Proposed Budget Update and Review

Administrative Services Director Yakimow presented an overview of the Town's budget process and how the proposed numbers were derived. Yakimow reviewed the questions and staff responses to inquiries submitted since the last workshop. The questions were related to a variety of line-items and the reasoning for the proposed budget request.

Ron Cohen, Yucca Valley stated he submitted 97 of the questions staff responded to, and would like to see 10 concerts in the summer line-up.

Lori Herbel, Yucca Valley inquired on the percentage of salaries charged for Successor Agency administration, suggested zero based budgeting procedures and requested an increase to the Museum's budget by \$70,000.

Max Witt, Yucca Valley agreed with the approach of having fewer concerts in the park so that better talent can be recruited.

Deputy Town Manager Stueckle explained that during the past couple of years, the Town has seen a reduction in \$750,000 of ongoing expenditures. The FY 2014-15 and FY 2015-16 proposed budget was prepared based on the Town Council's guiding principles.

The special budget workshop was adjourned by Administrative Services Director Yakimow at 5:40 p.m.

Respectfully Submitted,

Lesley Copeland, CMC
Town Clerk

**TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING MINUTES
May 20, 2014**

OPENING CEREMONIES

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

Council Members Present: Huntington, Leone, Rowe, and Mayor Lombardo. Abel was absent due to illness.

Staff Present: Deputy Town Manager Stueckle, Administrative Services Director Yakimow, Police Captain Mondary, Town Attorney Laymon, and Town Clerk Copeland

The Pledge of Allegiance was led by Mayor Lombardo.

The Invocation was led by Bishop Ralph Clinger, Church of Jesus Christ of Latter Day Saints.

PRESENTATIONS

1. San Bernardino County Sheriff's Department- Welcome Captain Dale Mondary and Introduction of Sergeants.

Mayor Lombardo introduced Dale Mondary, San Bernardino County Sheriff Captain, now serving the Morongo Basin.

Captain Mondary introduced San Bernardino County Sheriffs Sergeants, Matt Yost and Robert Warrick who are newly assigned to the Morongo Basin area.

APPROVAL OF AGENDA

Council Member Leone moved to approve the agenda for the Regular Town Council Meeting of May 20, 2014. Council Member Rowe seconded. Motion carried 4-0-1 on a roll call vote with Council Member Abel absent.

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

CONSENT AGENDA

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

3. Receive and file the monthly Statistical Fire Department Reports for the month of April 2014.

4. **Reject** one claim filed against the Town of Yucca Valley submitted on April 30, 2014 by Patricia Jean Wimbush
5. **Adopt** Resolution 14-13:
 1. Preliminarily approving the engineering reports for the existing assessment districts and directing the filing of such reports with the Town Clerk.
 2. Setting the date for conducting a public hearing for June 23, 2014 at 6 p.m. in the Yucca Valley Community Center, 57090 29 Palms Highway, Yucca Valley, CA 92284 pursuant to California Streets and Highways Code Sections 22552 and 22553 and Government Code Section 53753.5, to consider the levy of annual assessments upon real property.
6. **Accept** Town Project No. 8327- SR62 Median and Sidewalk Improvement 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.
7. **Receive and file** the FY 2013-14 Third Quarter Budget Report
8. **Receive and file** the Treasurer's Report for the Third Quarter of FY 2013-14
9. **Receive and file** the AB1234 Reporting Requirement Schedule for the month of April 2014
10. **Ratify** the Payroll Register total of \$136,902.48 dated April 25, 2014.
Ratify Warrant Register total of \$72,994.78 for checks dated May 1, 2014.

Mayor Lombardo opened public comment for items on the Consent Agenda. With no members of the public wishing to speak, public comments were closed.

Council Member Leone commented on the meetings he attended as listed on the AB1234 monthly report. (Item 9)

Mayor Pro Tem Huntington commented on surplus funds from the completed TCRP project. (Item 6)

Mayor Pro Tem Huntington moved to approve consent agenda items 2-10. Council Member Rowe seconded. Motion carried 4-0-1 on roll call vote.

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

PUBLIC HEARING**11. FY 2014-16 Proposed Budget Public Hearing**

Administrative Services Director Yakimow presented the staff report for the FY 2014-16 Proposed Budget, including an overview of the complete budget document developed with the Town Council's guiding principles. The proposed community partnership funding includes an additional allocation to Reach Out Morongo Basin of \$7,500 for both FY 2014-15 and FY 2015-16.

Mayor Lombardo opened the public hearing.

Ron Cohen, Yucca Valley commented that he will be meeting with Town staff regarding budget recommendations. Cohen also stated he is in favor of increasing the Transient Occupancy Tax (TOT) in Yucca Valley as an additional revenue source.

Robin Schlosser, Reach Out Morongo Basin thanked the Town Council for the support of the organization's programming.

Lori Herbel, Yucca Valley spoke favorably of the Hi Desert Nature Museum and would like the Town Council to consider raising the Museum's budget by \$70,000.

Margo Sturges, Yucca Valley commented on the Town's solar energy use and expects that the electricity bills to be lowered because of it. Sturges continued by requested to see a cash value of the Town's reserves and is against using reserves for infrastructure. Sturges suggested pulling the stated 10 percent for infrastructure off the top and then build the budget with what is remaining.

With no other members of the public wishing to speak, Mayor Lombardo closed the public hearing.

Mayor Lombardo commented favorably of public comment suggesting pulling an infrastructure allocation off the top. Also, sees the need to increase the TOT rate; however the increased revenue would not meet the required amount needed for infrastructure.

Deputy Town Manager Stueckle reminded the Town Council TOT revenue is a General Fund revenue, therefore is not considered restricted for a single use.

Council Member Leone stated is in favor of increasing the TOT rate and the benefits the increased revenue may have on the General Fund, especially tourism type activity.

Deputy Town Manager Stueckle explained that past conversations regarding increasing the TOT tax rate and the difficulty of a seeking revenue measure while the wastewater project is still

pending and the taxpayer costs are unknown. A revenue measure requires an extensive outreach program and should be timed accordingly. There is not adequate time to structure a campaign for the November ballot.

Mayor Lombardo stated he understands it is critical for Hi Desert Water District (HDWD) to be able to move forward with the sewer project.

Mayor Pro Tem Huntington spoke in agreement with Stueckle, the Town should not be in voter competition with HDWD.

Mayor Lombardo stated that the Town Council has reviewed the budget document and has worked closely with Town Staff to create a working document for the upcoming years.

Council Member Rowe commented that the hotel proprietors should be considered before a TOT rate discussion occurs.

Mayor Lombardo stated he supports the museum; however the revenues need to match what they were during the times referenced during public comment in order to sustain an increased operating level.

Council Member Leone agrees that the HDWD has a big job ahead and though he is in favor of an increase to the TOT rate, he does not want to sabotage HDWD's efforts.

Council Member Rowe moved to:

- Receive and file the staff presentation of the proposed budget for the General and Special Revenue funds for fiscal years 2014-16.
- Review the proposed Authorized Position Listing for fiscal year 2014-16 and provide comment or direction as appropriate.
- Review and accept the staff recommendation of allocating final revenues in excess of expenditures in an amount ranging from \$100,000 - \$130,000 in 2014-15 and \$130,000 - \$150,000 in 2015-16 to be budgeted for use in meeting a portion of the Town's infrastructure deficit.
- Direct staff to incorporate the proposed changes into the Town's final proposed budget plan for fiscal years 2014-16, and return a proposed balanced budget for adoption with the implementing resolutions on June 3, 2014.

Mayor Pro Tem seconded. Motion carried 4-0-1 on a Roll Call Vote.

AYES: Council Members Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None

ABSENT: Council Member Abel

DEPARTMENT REPORTS

12. SR 62, Camino del Cielo to Acoma, Signal Synchronization Project – Town Project No. 8028; Congestion Mitigation Air Quality (CMAQ) Grant; Federal Project No. CMLN 5466(019); Approval of Plans and Specifications: Authorization to Bid for Construction

Town Project Engineer Qishta presented the staff report giving an overview of the Signal Synchronization project. The Town received an allocation of \$218,312 in CMAQ funds for the synchronization of the traffic signals on SR 62 between Camino del Cielo and Acoma Trail. Because CMAQ funds are federal financial resources, competitive bidding for the expenditure is required.

The SR 62 traffic signals included in this project are at the corners of Camino del Cielo, Kickapoo Trail, Pioneertown Road/Deer Trail and Acoma Trail. Once in place, the future Church Street and Inca Trail signals will also be synchronized using other CMAQ grant funds.

For Phase 2, at the completion of this project, the Town will request that San Bernardino Associated Government use grant allocations to continue the synchronization of the remaining SR 62 traffic control signals in Yucca Valley.

Mayor Lombardo opened public comments. With no members of the public wishing to speak, public comments were closed.

Council Member Leone spoke favorably of the project.

Mayor Pro Tem Huntington inquired on the time frame for Phase 2.

Mayor Pro Tem Huntington moved to adopt Resolution No. 14-14 approving the plans and specifications for Project No. 8028, and authorize the Town Clerk to advertise and receive bids. Council Member Rowe seconded. Motion carried 4-0-1 on a roll call vote.

AYES: Council Members Huntington, Leone, Rowe and Mayor Lombardo

NOES: None

ABSTAIN: None

ABSENT: Council Member Abel

FUTURE AGENDA ITEMS

None stated.

PUBLIC COMMENTS

Mayor Lombardo opened public comments for items not on the agenda.

Lori Herbel, Yucca Valley spoke favorably of animal control staff with their expertise and compassion to the animals.

Margo Sturges, Yucca Valley commented on the timing of HDWD ballots and also commented on the proceedings at a recent Planning Commission meeting.

Fritz Koenig, Yucca Valley spoke of potential candidates for the upcoming November election and also commented on a recent discussion held at a Planning Commission meeting regarding Home Occupancy Permits.

Terry Anderson, Yucca Valley spoke of water flow during recent rains in his Story Park neighborhood and requested an asphalt berm be placed across the front of two properties to divert the water.

Sarann Graham, Yucca Valley spoke of a homeless census and the recruitment process for those wishing to assist. Graham also reminded those in attendance of upcoming outreach HDWD is conducting regarding the wastewater project.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

STAFF REPORTS AND COMMENTS

Deputy Town Manager Stueckle commented on the inquiry received from Mr. Anderson. Town staff will be following up with him.

Administrative Services Director Yakimow reminded the Town Council of the upcoming Grubstake Days events and the new parade route along Onaga Trail.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

13. Council Member Leone welcomed Captain Mondary and the new sergeants. Leone also commended Animal Control staff for their services and commitment to the community. Reminded everyone to stay safe over the busy weekend.
14. Council Member Rowe thanked the Sheriff's Department for their assistance in a recent missing child case and also thanked staff for the work put into the staff reports and budget document this evening.

15. Mayor Pro Tem Huntington thanked Yakimow and Cisneros for their assistance through the budget process and welcomed Mondary and sergeants. Huntington continued by giving a brief update on SB270 regarding the limit of single use or limited use plastic bags. Only five percent of these plastic bags are turned in for recycling.

16. Mayor Lombardo also welcomed Captain Mondary and Sergeants Yost and Warrick.

ANNOUNCEMENTS

The next meeting of the Yucca Valley Town Council will be held on Tuesday, June 3, 2014 at 6:00 p.m., in the Yucca Room of the Yucca Valley Community Center.

CLOSED SESSION

1. **Conference with Legal Counsel – Anticipated Litigation**
2. **Public Employee Appointment / Conference with Labor Negotiator (One Matter)**

Mayor Lombardo opened public comment on closed session items. With no members of the public wishing to speak, public comments were closed.

Mayor Lombardo adjourned to closed session at 7:50 p.m.

REPORT OUT FROM CLOSED SESSION - ADJOURNMENT

Town Attorney Laymon reported that closed session adjourned at 8:20 p.m. with no reportable action.

Respectfully Submitted,

Lesley Copeland, CMC
Town Clerk

**TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING MINUTES
JUNE 3, 2014**

OPENING CEREMONIES

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

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

Staff Present: Deputy Town Manager Stueckle, Administrative Services Director Yakimow, Police Lieutenant Wilke, Town Attorney Laymon, and Town Clerk Copeland

The Pledge of Allegiance was led by the Town of Yucca Valley Youth Commissioners

The Invocation was led by Pastor Myron Wells, First Christian Church

PRESENTATIONS

1. Cheryl Nankervis Retirement Proclamation

Mayor Lombardo presented a Town Council proclamation to Cheryl Nankervis recognizing her on her retirement after 21 years of service with the Yucca Valley Chamber of Commerce

2. Employees of the Year

Deputy Town Manager Stueckle introduced the full-time Employee of the Year, Susan Earnest. Administrative Services Director Yakimow commended Earnest for the dedication to the organization and the community as Recreation Supervisor for the past year.

Deputy Town Manager Stueckle introduced the part-time Employee of the Year, Chelsea Shirley. Animal Care and Control Manager Crider credited Kennel Technician Shirley with an unyielding dedication and compassion to the animals being cared for at the Yucca Valley Animal Shelter.

3. 2013-14 Youth Commission Presentation and Recognition

2013-14 Youth Commissioner Chair Hannah Bogue, and Vice Chair Rachel Green presented an overview of the accomplishments for the 2013-14 year which included conducting a policy review to the Town's park ordinance, created a Teen Connection video on sleep deprivation of teens, a middle school forum and assistance with many of the recreation programs and special events. Recreation Supervisor and Staff Liaison Earnest recognized the Youth Commissioners for their dedication to the teens of the community through local government.

APPROVAL OF AGENDA

Mayor Pro Tem Huntington moved to approve the agenda for the Regular Town Council Meeting of June 3, 2014. Council Member Rowe seconded. Motion carried 5-0 on a roll call vote with Council Member Abel absent.

- AYES:** Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

CONSENT AGENDA

- 4. **Waive** further reading of all ordinances and read by title only
- 5. **Adopt** Resolution No. 14-15 calling and giving notice of a General Election on November 4, 2014, and adopt Resolution No. 14-16 adopting regulations for candidates, subject to non-substantial modifications, and authorizes the Mayor, Town Manager and Town Attorney to execute the document as required
- 6. **Approve** the Contract between the County of San Bernardino and the Town of Yucca Valley for providing animal shelter services for FY 2014-15.
- 7. **Award** the 2014/2015 Town Wide Slurry Seal Project – Town Project No. 8340 construction contract to Pavement Coatings Company, in the amount of \$370,700 and authorizes a construction contingency in the amount of \$37,300, for a total contract amount of \$408,000, authorizing the Mayor, Town Manager and Town Attorney to sign all necessary documents, and authorizing the Town Manager to expend the contingency fund, if necessary, to complete the project.
- 8. **Find** that the Five Year Capital Improvement Program is exempt from CEQA in accordance with Section 15378(b) (4) and Section 15061 (b) (3) of the California Environmental Quality Act. The Capital Improvement Program (CIP) is not a project nor is there possibility of a significant effect on the environment from the program. Further the CIP does not result in a commitment to any specific project. And;

Adopt the Five Year Capital Improvement Program for Fiscal Years 2014/2015 through 2018/2019
- 9. **Ratify** the Payroll Register total of \$126,560.41 dated May 9, 2014.
Ratify Warrant Register total of \$1,144,348.49 for checks dated May 15, 2014.

Mayor Lombardo opened public comment for items on the Consent Agenda.

Susan Simmons, Yucca Valley provided comment on Item #5, calling the General Election of November 2014.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Mayor Pro Tem Huntington moved to approve consent agenda items 4-9. Council Member Abel seconded. Motion carried 5-0 on roll call vote.

- AYES:** Council Members Abel, Huntington, Leone, Rowe and Mayor Lombardo
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

DEPARTMENT REPORTS

10. FY 2014-16 Proposed Budget Adoption

Administrative Services Director Yakimow presented the staff report for the FY 2014-16 Proposed Budget, including an overview of the complete budget document developed with the Town Council’s guiding principles. The balanced budget includes an anticipated transfer towards the Town’s infrastructure needs of approximately \$120,000.

Deputy Town Manager Stueckle presented a visual report on the current conditions of local roadways and explained the costs of maintaining the Town’s streets based on the roadway’s current condition.

Administrative Services Director Yakimow continued the report by presenting three possible funding options to accomplish reaching the Town Council’s goal of applying 10 percent or approximately \$900,000 toward the backlog of infrastructure maintenance.

Mayor Lombardo opened the public hearing.

Ron Cohen, Yucca Valley commented on the presented budget and presented a list of several suggested items to possibly reduce expenditures.

Gideon Smith, Yucca Valley and President of the Morongo Basin Tennis Association thanked the Town Council for their consideration toward the community partnerships.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

Council Member Abel commented on the list of items presented by Mr. Cohen and thanked Mr.

Smith for his commitment to the youth of the community and the world of tennis. Abel thanked staff for the conservative approach to a balanced budget.

Council Member Rowe commented on the public safety contract and thanked staff for presenting a concise budget that represents the Town Council's guiding principles.

Council Member Leone inquired about the process that staff arrives at the revenue estimations and commented on the list presented by Mr. Cohen.

Mayor Pro Tem Huntington asked about public safety costs including the contract amount and anticipated overtime costs. Huntington also stated he would like to see notations made on the staffing authorization position list to show the step at which each employee is at.

Mayor Lombardo thanked Mr. Cohen and his committee for reviewing the budget and providing input. Lombardo also thanked staff for presenting a comprehensive budget.

Council Member Abel moved to approve

- Adopt a resolution approving the fiscal years 2014-16 proposed budget, and designating those officials authorized to make requisitions for encumbrances against appropriations.
- Adopt a resolution establishing the spending limitation for fiscal year 2014-15.
- Adopt a resolution authorizing positions for fiscal years 2014-16, and authorizing pay ranges for such positions for fiscal years 2014-16, effective with the payrolls dated July 18, 2014 and July 17, 2015.
- Approve an amendment for fiscal year 2014-15 to the contract with the San Bernardino County Sheriff's Department, and authorize the Town Manager or Mayor to sign on behalf of the Town.
- Approve the proposed scope of service and term modification for the Town's Chamber of Commerce contract services agreement, and authorize the Town Manager or Mayor to sign on behalf of the Town.
- Approve the proposed partnership agreement between the Town and the Boys and Girls Club of the Hi Desert for the FY 2014-16 term, and authorize the Town Manager or Mayor to sign on behalf of the Town.

Council Member Rowe seconded. Motion carried 5-0 on a Roll Call Vote.

AYES: Council Members Abel Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None

ABSENT: None

11. Appointment of Voting Delegate and Two alternates for the business meeting of the League of California Cities Annual Conference

Town Clerk Copeland presented the staff report explaining that the Town is a member of the League of California Cities. As part of the Annual Conference a business meeting occurs where the membership takes action on conference resolutions. These resolutions guide cities and the League in efforts to improve the quality, responsiveness and transparency of local government in California. The League requires formal designations of voting delegates and alternatives for official League business.

Mayor Lombardo opened public comments. With no members of the public wishing to speak, public comments were closed.

Council Member Abel nominated Mayor Lombardo as the voting delegate for the business meeting of the League of California Cities Annual Conference in September 2014. Mayor Pro Tem Huntington seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

Council Member Abel nominated Mayor Pro Tem Huntington and Council Member Leone as alternates voting delegate alternates for the business meeting of the League of California Cities Annual Conference in September 2014 Council Member Rowe seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

12. State Safe Routes to School Grant Funds (SR2); Sage Avenue Safe Route to School (SR2S) Improvements – Town Project No. 8320; Award of Construction Bid

Deputy Town Manager Stueckle presented the staff report for the award of bid for Town Project No. 8320 explaining that this represents the second round of the bidding process since the first set of bids were rejected due to all being over the available funding.

Project No. 8320 involves improvements on Sage Ave, between Onaga Trail and SR 62, consisting of sidewalks, curb, and gutter. The replacement of six (6) outdated electronic read-out

radar speed signs and flashing beacons, and includes all appurtenant labor, materials and equipment.

The project bid structure included the base bid and three (3) alternate bids to maximize the available resources.

Alternate A includes the installation of flashing beacon at the intersection of Pueblo Trail and Sage Ave and all apparent work. Alternate B includes the installation of all improvements on the east side of Sage Avenue from Pueblo Trail to SR 62. Alternate Bid C includes the installation of all improvements on the east side of Sage Ave from Onaga Trail to Pueblo Trail.

Four bids were received; the lowest apparent bidder being Matich Corporation of San Bernardino, California with a base bid of \$274,000.

Mayor Lombardo opened public comments. With no members of the public wishing to speak, public comments were closed.

Council Member Abel commented favorably on going back out to bid that meet the budget and stated he would like to see Alternative A included in the project.

Council Member Rowe stated Alternative A would be beneficial.

Council Member Leone state he would like see Alternative A included in the project.

Mayor Pro Tem Huntington commented that the Council should look at the cost of construction Sidewalks should be installed on both sides of Sage Ave and would like to see Alternative C included.

Mayor Lombardo inquired on construction costs to include all alternatives in the project.

Mayor Pro Tem Huntington moved to award the construction contract for the Sage Ave Safe Routes to Schools (SR2S) Improvements- Town Project No. 8320 to Matich Corporation, in the amount of \$274,000 for the base bid, \$89,000 to include Alternate Bid C, and a construction contingency in the amount of \$36,300 for a total contract amount of \$399,300, authorizing the Mayor, Town Manager and Town Attorney to sign all necessary documents, and authorizing the Town manager to expend the contingency fund, if necessary, to complete the project. Council Member Abel seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Members Abel Huntington, Leone, Rowe and Mayor Lombardo
NOES: None
ABSTAIN: None
ABSENT: None

FUTURE AGENDA ITEMS

Council Member Leone would like to discuss speed limits on dirt roads.

PUBLIC COMMENTS

Mayor Lombardo opened public comments.

Charles McHenry, Yucca Valley commented on the fire-fighting capabilities with roof-mounted solar panels.

Mark Simmons, Yucca Valley commented on the need for a local medical marijuana dispensary in Yucca Valley.

With no other members of the public wishing to speak, Mayor Lombardo closed public comments.

STAFF REPORTS AND COMMENTS

None Stated

Mayor Lombardo adjourned the regular Town Council meeting and convened the Successor Agency to the Yucca Valley RDA meeting at 7:28 p.m.

Mayor Lombardo reconvened to the regular Town Council meeting at 7:35 p.m.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

13. Council Member Abel congratulated Earnest and Shirley for their awards and thanked the Youth Commissioners for their involvement in local government.
14. Council Member Leone thanked the Youth Commission for serving the community and congratulated Earnest and Shirley for the Employee of the Year awards.
15. Council Member Rowe thanked Earnest and Shirley for their dedication to the organization and the community, and thanked Yakimow and Cisneros for their work on the budget.
16. Mayor Pro Tem Huntington congratulated Cheryl Nankervis on her retirement and thanked Earnest and Shirley for a job well-done.
17. Mayor Lombardo congratulated the Employees of the Year, Earnest and Shirley, and thanked the Youth Commission for being involved in the community.

ANNOUNCEMENTS

A special meeting of the Yucca Valley Town Council is scheduled for Monday, June 23, 2014 at 6:00 pm.

The next regular meeting of the Yucca Valley Town Council will be held on Tuesday, August 5, 2014.

Both meetings will be held at the Yucca Valley Community Center Yucca Room

CLOSED SESSION

Town Attorney Laymon announced the closed session items. Mayor Lombardo opened public comments. With no members of the public wishing to speak on the closed session items, public comments were closed.

1. Public Employee Appointment / Conference with Labor Negotiator (One Matter)

Pursuant to Government Code § 54957, to continue discussing the appointment of an employee to the position of Town Manager,

Also authorized pursuant to Government Code § 54957.6 regarding labor negotiations continuing to discuss the filling of the unrepresented position of Town Manager (Councilmembers Leone and Rowe as negotiators for the Town).

Mayor Lombardo adjourned to closed session at 7:45 p.m.

REPORT OUT FROM CLOSED SESSION - ADJOURNMENT

Town Attorney Laymon reported that closed session adjourned at 8:30 p.m. with no reportable action.

Respectfully Submitted,

Lesley Copeland, CMC
Town Clerk

The conditions required to be satisfied prior to final map approval have been satisfied.

The property is being subdivided into three (3) parcels. Parcel 1, being 0.75 +/- acre Parcel 2, being 0.84 +/- acre, and Parcel 3, being 23.88 +/- acres.

Subdivision Improvement Agreements (SIAs) are required for all maps, including tract and parcel maps. SIAs guarantee and bond (performance guarantee) for the construction of public improvements, in addition to addressing other requirements and standards. In this project, all public improvements have been constructed and finalized by the Town. The only additional component created by this parcel map is the placement of monuments (monumentation) as directed by the Town Engineer.

The estimated cost for monumentation is approximately \$300 per monument. Therefore a total performance surety of \$5,000 will be required to accompany the SIA.

Alternatives: Staff recommends no alternative actions. Final Council approval is required to record Parcel Map.

Fiscal impact: NA

Attachments: Conditions of Approval
Copy of Map
Planning Commission Minutes of March 11, 2014
Planning Commission Staff Report & Backup Materials of March 11, 2014

**TOWN OF YUCCA VALLEY
CONDITIONS OF APPROVAL
ENVIRONMENTAL ASSESSMENT, EA 05-13
CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525
EIR STATE CLEARINGHOUSE #2004071127
PANDA EXPRESS-TACO BELL**

This approval is for Environmental Assessment, EA 05-13, Conditional Use Permit, CUP 02-04 Amendment #1, Tentative Parcel Map, TPM 19525, a request to subdivide 26 acres into three parcels and construct a 2,230 square foot Panda Express and a 2,423 square foot Taco Bell. The project is located on the southeast corner of 29 Palms Hwy and Avalon Ave and is further identified as APN: 601-201-37

GENERAL CONDITIONS

- G1. The applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Town of Yucca Valley Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify the applicant of any claim, action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.
- G2. This Conditional Use Permit shall become null and void if construction has not commenced within three (3) years of the Town of Yucca Valley date of approval. Extensions of time may be granted by the Planning Commission, in conformance with the Town of Yucca Valley Development Code. The applicant is responsible for the initiation of an extension request.

**CUP 02-04, Amendment #1 Approval Date: March 11, 2014
CUP 02-04 Amendment #1 Expiration Date: March 11, 2017**

**TPM 19525 Approval Date: March 11, 2014
TPM 19525 Expiration Date: March 11, 2016**

Applicant Initials _____

- G3. The applicant shall ascertain and comply with requirements of all State, County, Town and local agencies as are applicable to the project. These include, but are not limited to, County of San Bernardino Environmental Health Services, County of San Bernardino Transportation/Flood Control, County of San Bernardino Fire Department, Yucca Valley Building and Safety, Caltrans, High Desert Water District, Airport Land Use Commission, California Regional Water Quality Control Board, Colorado River Region, the Federal Emergency Management Agency, MDAQMD-Mojave Desert Air Quality Management District, Community Development, Engineering, and all other Town Departments.
- G4. All conditions are continuing conditions. Failure of the applicant to comply with any or all of said conditions at any time may result in the revocation of any construction permits for the project.
- G5. No on-site or off-site work shall commence without obtaining the appropriate permits for the work required by the Town and the appropriate utilities. The approved permits shall be readily available on the job site for inspection by Town personnel.
- G6. The applicant shall pay all fees charged by the Town as required for application processing, plan checking, construction and/or inspections. The fee amounts shall be those which are applicable and in effect at the time work is undertaken and accomplished. Fees for entitlement prior to construction permits are based on estimated costs for similar projects. Additional fees may be incurred, depending upon the specific project. If additional fees for services are incurred, they must be paid prior to any further processing, consideration, or approval(s).
- G7. All improvements shall be inspected by the Town as appropriate. Any work completed without proper inspection may be subject to removal and replacement under proper inspection.
- G8. All refuse shall be removed from the premises in conformance with Yucca Valley Town Code 33.083.
- G9. During construction, the Applicant shall be responsible to sweep public paved roads adjacent to the project as necessary and as requested by the Town to eliminate any site related dirt and debris within the roadways. During business activities, the applicant shall keep the public right-of-way adjacent to the property in a clean and sanitary condition.
- G10. No staging of construction equipment or parking of worker's vehicles shall be allowed within the public right-of-way of streets or other public improvements that have been accepted into the Town's maintained system

Applicant Initials _____

- G11. All existing street and property monuments within or abutting this project site shall be preserved consistent with AB 1414. If during construction of onsite or offsite improvements monuments are damaged or destroyed, the applicant shall retain a qualified licensed land surveyor or civil engineer to reset those monuments per Town Standards and file the necessary information with the County Recorder's office as required by law (AB 1414).
- G12. Each phase of the project shall function independently of all other phases. All improvements shall be completed for each phase to ensure that each phase functions separate from the remainder of the project, and shall include, but not be limited to, street improvements, drainage and retention/detention facilities, water delivery systems, fire suppressions systems, post construction erosion and sediment control systems, all utilities necessary to serve the project, and those improvements deemed necessary by the Town. All phasing plans shall be illustrated on rough and precise grading plans, erosion and sediment control plans, all plan required for obtaining native plant plan approval, and on any other plan as deemed necessary by the Town.
- G13. At least one sign per fronting street shall be posted on the site and must contain the following information: the grading permit number, the project name, map number (if appropriate), the authorized dust controller phone number(s), the Town phone number and the Mojave Desert Air Quality Management District (MDAQMD) phone number. The signs must be obtained and installed by the developer using the sample format to be provided. The signs must be present at the pre-construction meeting or the grading permit will not be issued. The developer must keep the contact name and phone number active and current at all times. Failure of the contact system may be considered grounds for revocation of the permit.
- G14. At the time of permit issuance the applicant shall be responsible for the payment of fees associated with electronic file storage of documents
- G15. The Applicant shall reimburse the Town for the Town's costs incurred in monitoring the developer's compliance with the Conditions of Approval including, but not limited to, inspections and review of developer's operations and activities for compliance with all applicable dust and noise operations. This condition of approval is supplemental and in addition to normal building permit and public improvement permits that may be required pursuant to the Yucca Valley Municipal Code.
- G16. Prior to the issuance of a Certificate of Occupancy for any habitable structure in each phase of the project, all improvements shall be constructed, final inspection performed, punch-list items completed, and all installations approved by the appropriate agency.

Applicant Initials _____

- G17. After final plan check by the Town, original mylars (4 mil) shall be submitted to the Town for signature by the Town Engineer. All original mylars submitted for Town Engineer's signature must contain the design engineer's wet signature and stamp and all other required signatures.
- G18. For any import or export of material, the Project proponent shall provide the following for review by the Town Engineer: the route of travel, number of trucks, daily schedule, and length of time required. No hauling of material shall begin without the Town Engineer's approval.
- G19. Prior to any work being performed within the public right-of-way, the Project proponent shall provide the name, address, telephone, facsimile number, and e-mail address of the Contractor to perform the work. A description of the location, purpose, method of construction, and surface and subsurface area of the proposed work shall be supplied. A plat showing the proposed location and dimensions of the excavation and the facilities to be installed, maintained, or repaired in connection with the excavation, shall be provided and such other details as may be required by the Town Engineer.
- G20. The site shall be developed in accordance with the approved plans on file with the Town of Yucca Valley, in accordance with the Conditions of Approval approved for the project, and in accordance with the General Plan and Development Code. Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Town.
- G21. Prior to issuances of building permits, all site plans, grading plans, landscape and irrigation plans, drainage/flood control plans, public improvement plans, erosion and sediment control plans, shall be coordinated for consistency with this approval.
- G22. The Town may allow phased construction of the project provided that the improvements necessary to adequately serve or mitigate the impacts of each phase of development are completed prior to the issuance of a Certificate of Occupancy for that phase.
- G23. The applicant or the applicant's successor-in-interest shall be responsible for maintaining any undeveloped portion of the site in a manner that provides for the control of weeds, erosion and dust.
- G24. If archaeological, paleontological or historical resources are uncovered during excavation or construction activities at the project site, work in the affected area will cease immediately and a qualified person with appropriate expertise shall be consulted by the applicant regarding mitigation measures to preserve or record the find. Recommendations by the consultant shall be implemented as deemed

Applicant Initials _____

necessary and feasible by the Town before work commences in the affected area. If human remains are discovered, work in the affected area shall cease immediately and the County Coroner shall be notified. If it is determined that the remains might be those of a Native American, the California Native American Heritage Commission shall be notified and appropriate measures provided by State law shall be implemented.

- G25. All street dedications shall be irrevocably offered to the public and shall continue in force until the Town accepts or abandons such offers. All dedications shall be free of all encumbrances as approved by the Town Engineer.
- G26. The street design and circulation pattern of this project shall be coordinated with adjoining developments.
- G27. The final conditions of approval issued by the approving authority shall be photographically or electronically placed on bond (blue/black line) paper and included in the Grading and Street Improvement plan sets on 24" x 36" bond (blue/ black line) paper and submitted with the plans for plan check. These conditions of approval shall become part of these plan sets and the approved plans shall be available in the field and during construction. Plan check fees shall not be charged for sheets containing the Conditions of Approval.
- G28. Prior to issuance of a certificate of occupancy, the applicant shall submit all improvement plans on compact disks in digital format acceptable to the Town Engineer.
- G29. Violations of any condition or restriction or prohibition set forth in these conditions, including all approved construction plans, public and private, for this project and subject to the Town's overall project approval and these conditions of approval, shall subject the owner, applicant, developer or contractor(s) to the remedies as noted in the Municipal Code. In addition, the Town Engineer or Building Official may suspend all construction related activities for violation of any condition, restriction or prohibition set forth in these conditions until such time as it has been determined that all operations and activities are in conformance with these conditions.

PLANNING CONDITIONS

- P1. The development of the property shall be in conformance with FEMA and the Town's Floodplain Management Ordinance requirements. Adequate provision shall be made to intercept and conduct the existing tributary drainage flows around or through the site in a manner that will not adversely affect adjacent or downstream properties at the time the site is developed. Protection shall be provided by constructing adequate drainage facilities, including, but not limited to modifying existing facilities or by securing a drainage easement.

Applicant Initials _____

- P2. In accordance with Ordinance 169, utility undergrounding shall be required for all new service and distribution lines that provide direct service to the property being developed; existing service and distribution lines that are located within the boundaries being developed; existing service and distribution lines between the street frontage property line and the centerline of the adjacent streets of the property being developed; existing Service and Distribution lines located on adjacent properties along or within 10 feet of the lot lines of the property being developed; or existing service and distribution lines being relocated as a result of a project.
- P3. All exterior lighting shall comply with the Ordinance 90, Outdoor Lighting and shall be illustrated on all construction plans.
- P4. **All mitigation measures identified in the Super Wal-Mart Environmental Impact Report and included in the Mitigation Monitoring Program are included as conditions of approval by this reference.**
- P5. A final plan identifying all protected plants as well as a Native Plant Relocation Plan with any area proposed to be disturbed in accordance with the Town's Native Plant Protection Ordinance shall be submitted for approval prior to issuance of any construction permits, including grading and utility installations, for the project. **The applicant shall make every effort to relocate the native plants back onsite. The adoption of native plants shall be consistent with the Native Plant Ordinance in effect at the time of grading permits. The final native plant plan shall be reviewed and approved by the Planning Commission prior to the issuance of any construction permits for the project site.**
- P6. Prior to the issuance of any permits the applicant/owner shall provide three (3) copies of a landscape and irrigation plan showing the size, type and location of all plant and irrigation systems. Said irrigation system shall incorporate a permanent automatic irrigation system, and all landscaping and irrigation systems shall be maintained in good condition at all times. All ground within proposed landscape planter areas shall be provided with approved ground cover. This shall include but not be limited to drought-tolerant plant materials or colored desert rock. The Landscape Plan shall be approved by Hi-Desert Water District. The Landscape and Irrigation review requires a separate application and a current Town fee of \$685. **The final Landscape and Irrigation Plan shall be reviewed and approved by the Planning Commission prior to the issuance of any permits.**
- P7. **Reciprocal parking and access agreements shall be recorded on all lots within the Parcel Map.**

ENGINEERING CONDITIONS

Applicant Initials _____

- E1. Prior to the issuance of a Grading Permit, a precise grading plan prepared by a recognized professional Civil Engineer shall be submitted, and the corresponding fees shall be paid to the Town prior to any grading activity. The precise grading plan shall be reviewed and approved by the Town Engineer prior to issuance of grading permits. The applicant/owner is responsible for all fees incurred by the Town. Prior to Certificate of Occupancy, the Engineer-of-Record shall survey and certify that the site grading was completed in substantial conformance with the approved Grading Plans.
- E2. **All manufactured slopes over the height of 3 feet shall be irrigated and landscaped immediately following grading. Prior to issuance of a grading permit for any portion of the site, the applicant/owner shall submit, for review and approval, an irrigation and landscaping plan or other appropriate treatment for all slope areas.**
- E3. The Engineer-of-Record or other civil engineer shall survey and provide pad certification for the site prior to issuance of building permits.
- E4. Prior to the issuance of Permits, the Applicant shall comply with the recommendations of a site-specific Geotechnical and Soils Report which shall be reviewed and subject to Town approval. The report shall include recommendations for any onsite and offsite grading, foundations, compaction, structures, drainage, and existence of fault zones. It shall include recommendations for retention basins, slope stability and erosion control. The soils engineering report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, when necessary and opinions and recommendation covering the adequacy of sites for development. The report shall identify if the site contains any areas susceptible to landslide risk, liquefaction potential and/or subsidence potential on the project site. The report shall identify and include the location of major geologic features, topography and drainage, distribution and general nature of rock and soils, a reasonable evaluation and prediction of the performance of any proposed cut or fill in relation to geological conditions, and the capability of soils and substrata to support structures.
- E5. All property corners, lots, easements, street centerlines, and curve radii shall be monumented and horizontally tied to identified control points. A copy of the monumentation survey and centerline tie notes shall be provided to the Town Engineer prior to certificate of occupancy.
- E6. All recommended approved measures identified in the Soils Report shall be incorporated into the project design.

Applicant Initials _____

- E7. A pre-filtration system shall be installed for all drain lines connected to any underground storage system to collect sediment and hydrocarbon material prior to discharge into the underground system.
- E8. Any grading or drainage onto private off-site or adjacent property shall require a written permission to grade and/or a permission to drain letter from the affected property owner.
- E9. In conjunction with precise grading certification, all retention/detention basins shall be certified by a civil engineer that they have been constructed in substantial conformance with the approved plans, and shall be certified that they have the required capacity and will operate in accordance with the approved drainage reports for the project.
- E10. In conjunction with precise grading certification, all drainage systems, both public and private, shall be certified by a civil engineer that they have been constructed in substantial conformance with the approved plans, and shall be certified that they have the required capacity and will operate in accordance with the approved drainage reports for the project.
- E11. No on-site or off-site work shall commence without obtaining the appropriate permits for the work involved from the Town. The approved permits shall be readily available on the job-site for inspection by the Town personnel.
- E12. All grading activities shall minimize dust through compliance with MDAQMD Rules 402 and 403.
- E13. Prior to issuance of a grading permit, a Fugitive Dust and Erosion and Sediment Control Plan shall be submitted and approved by the Town Engineer. The Fugitive Dust and Erosion and Sediment Control Plan shall illustrate all proposed phasing for construction of the project.
- E14. A Notice of Intent to comply with Statewide General Construction Stormwater Permit (Water Quality Order 99-08-DWQ as modified December 2, 2002 or as otherwise updated by the Board) is required for the proposed development via the California Regional Water Quality Control Board (phone no. 760-346-7491). A copy of the executed letter issuing a Waste Discharge Identification number shall be provided to the Town prior to issuance of a grading permit. The Applicant shall comply with NPDES requirements as applicable. The Applicant shall install devices on his property to keep erodible material, rocks, and gravel on the site. To eliminate any site related dirt and debris within the roadways, the Applicant shall be responsible to sweep public paved roads adjacent to the project as necessary and as requested by the Town Staff.
- E15. Prior to any work being performed in the public right-of-way, fees shall be paid and an encroachment permit shall be obtained from the Town. The Applicant shall apply for an encroachment permit from the Town for utility trenching, utility

Applicant Initials _____

connection, or any other encroachment onto public right-of-way. The Applicant shall be responsible for the associated costs and arrangements with each public utility.

- E16. The Applicant shall restore any pavement cuts required for installation or extension of utilities for his project within the public right-of-way. In all cases where cuts are allowed, the Applicant is required to patch the cuts to Town standards and the approval of the Town Engineer. The patching shall include a grinding of the pavement to a width 4 feet beyond the edge of the trench on each side, or as determined by the Town Engineer, and replacement with a full-depth asphalt concrete recommended by the Soils Engineer.
- E17. The Applicant shall accept and properly dispose of all off-site drainage flowing onto or through the site.
- E18. The Applicant shall construct the replacement of any identified damaged curb and gutter, sidewalk, drive approach, asphalt concrete pavement, meter boxes, and other infrastructure that may be required by the Town Engineer or another Agency.
- E19. The Applicant shall install all water and sewer systems required to serve the project. All water and sewer systems shall be completed to the requirements of the Hi Desert Water District.
- E20. The Applicant shall observe the construction of this project to make certain that no damage or potential for damage occurs to adjacent roadway, existing improvements, adjacent property and other infrastructure. The applicant shall be responsible for the repair of any damage occurring to offsite infrastructure and/or property damage as determined by the Town Engineer. The applicant shall repair any such damage prior to certificate of occupancy. If the damage is such that it is not repairable within a reasonable amount of time as determined by the Town Engineer, the applicant may petition the Town Engineer for additional conditions that may allow him the time, amount of surety and other requirements to repair the damage.
- E21. The Applicant shall be responsible for all improvements constructed within the public right-of-way as required by the conditions of approval. The improvements shall be constructed to the standards and requirements as determined and approved by the Town Engineer. Any improvements not considered to be to the required standards shall be replaced by the Applicant. The Applicant shall be required to maintain and repair those improvements prior to and after acceptance by the Town Council for the length of time required by the applicable conditions, standards and ordinances.
- E22. All improvement plans shall be designed by a Registered Civil Engineer.
- E23. Any area which remains undeveloped for a period of more than 30 days shall be stabilized using either chemical stabilizers or a desert wildflower mix hydroseed on the affected portion of the site.

Applicant Initials _____

- E24. The Applicant shall be responsible for inspection, modification, and proper maintenance of the erosion control devices as necessary. If the Applicant fails or refuses to properly maintain the erosion control devices, the Town official may cause emergency maintenance work to be done in order to protect potentially impacted property. The cost shall be deducted from the erosion control security posted for the project and shall include all costs related to the emergency maintenance including initial mobilization and performance of the work in addition to applicable administrative costs.
- E25. If construction of erosion control systems outside of the project boundaries is necessary, permission to construct such systems from the owner of such off-site property is required. Plans for the off-site system shall be included with the on-site plans submitted to the Town Engineer. The plans for the off-site erosion control system shall include permission to grade and maintain the erosion control system from all affected property owners and letters of clearance and/or permits from all appropriate governmental entities.
- E26. The Applicant shall submit a post construction erosion and sediment control plan which identifies and illustrates all necessary improvements to prevent the movement and or loss of any soil and sediment materials from the project site, including all individual lots for construction of habitable structures, all slope banks, and all areas of the site capable of resulting in the deposit of soils and sediments with the street or storm drain system. The post construction erosion and sediment improvements shall be certified by a civil engineer that they were constructed in substantial conformance with the approved plans and specifications.
- E27. It is understood that the Conditional Use Permit plans correctly shows all existing easements, traveled ways and drainage courses, and that their omission may require the Conditional Use Permit plans to be resubmitted for further consideration.
- E28. Private drainage easements for cross-lot drainage shall be dedicated and delineated on the final map.
- E29. A construction area traffic control plan, including temporary and final permanent striping, shall be designed by a registered Civil Engineer or Traffic Engineer for review and approval by the Town Engineer for any street construction, closure, detour or other disruption to traffic circulation.
- E30. All street closures must be approved by Town Council action.
- E31. The following shall information regarding the presence of the Marine Corps Air Ground Combat Center (MGAGCC) shall be recorded on the title of each property contained within the boundaries of the Conditional Use Permit.
- "The Marine Corps Air Ground Combat Center is located in the Morongo Basin. To prepare Marines for future conflicts, the MGAGCC carries out realistic training with military munitions, both day and night. As a result, Military aircraft fly over

Applicant Initials _____

the area, and military vehicles drive on and off the base every day. This property is located directly under two aircraft flying routes and is located approximately 13 miles from the installation boundary. Consequently, you should expect to hear military training, see low-flying military aircraft, and encounter other experiences associated with the important mission of the MCAGCC”.

- E32. After final plan check by the Town, original mylars (4 mil) shall be submitted to the Town for signature by the Town Engineer. All original mylars submitted for the Town Engineer’s signature must contain the design engineer’s wet signature and stamp and all other required signatures.
- E33. The project street and lot grading shall be designed in a manner that perpetuates the existing natural drainage patters with respect to tributary drainage area and outlet points. Unless otherwise approved by the Town Engineer, lot lines shall be located at the top of slopes.
- E34. Improvement plans shall be based upon a centerline profile, extending beyond the project boundaries a minimum distance of 300 feet at a grade and alignment approved by the Town Engineer.
- E35. Prior to final parcel map approval, the applicant shall enter into a subdivision improvement agreement with the Town of Yucca Valley. In addition to the subdivision improvement agreement, the applicant shall submit bonds including but not limited to, 100% faithful performance bond, 50% labor and materials bond, 25% guaranty/ warranty bond, monument bond and grading bond.
- E36. The engineer-of-record shall prepare bond estimates for public improvements required for the project. The estimates shall be prepared on estimating forms provided by the Town. The bond estimate shall be reviewed and approved by the Town Engineer.
- E37. Drainage easements, when required, shall be shown on the final map and noted as follows: “Drainage Easement – no buildings, obstructions or encroachments by land fills are allowed”.
- E38. It is understood that the tentative map correctly shows all existing easements, traveled ways and drainage courses, and that their omission may require the tentative map to be resubmitted for further consideration.
- E39. If improvements associated with this project are not initiated within the approval time period of the subdivision improvement agreement, the Town Engineer may require that plans be modified to reflect current codes and standards in effect at the time of request for an extension of time for the improvement agreement or issuance of a permit.
- E40. Private drainage easements for cross-lot drainage shall be dedicated and delineated on the final map.
- E41. With submittal of grading plans, street improvement plans, storm drain and retention/detention basin plans, and erosion and sediment control plans, the

Applicant Initials _____

Applicant shall cause to be formed, **or shall be annexed into an existing**, maintenance district(s) for landscape, lighting, streets, drainage facilities or other infrastructure as required by the Town. The Applicant shall initiate the maintenance and benefit assessment district(s) formation, **or annexation**, by submitting a landowner petition and consent form (provided by the Town) and deposit necessary fees concurrent with the application for street and grading plan review and approval; and said maintenance and benefit assessment district(s) shall be established concurrent with the approval of the final map in the case of the subdivision of land, or prior to issuance of any certificate of occupancy where there is no subdivision of land.

- E42. The proposed restaurants shall connect to the existing sewer and water stub-outs provided by the Wal-Mart development.
- E43. Storm waters shall be routed to the existing storm water retention basin.
- E44. Areas for construction stockpiling, equipment storage and maintenance shall be submitted to the Town Engineer for review and approval with each phase of the project.

BUILDING AND SAFETY CONDITIONS

- B1. Prior to the delivery of combustible materials, the following items shall be accepted as complete:
 - a. The water system is functional from the source of water past the lots on which permits are being requested (i.e. All services are installed, valves are functional and accessible, etc.); and
 - b. Fire hydrants are accepted by the County Fire Department and the Hi Desert Water District. The fire hydrants associated with each phase shall be functioning prior to issuance of building permits.
- B2. The applicant shall submit three sets of plans to the Building and Safety Dept. for plan check and approval.
- B3. At the time of building plan check submittal, the applicant shall provide approval from the San Bernardino County Fire Dept.
- B4. Prior to final inspection, all required improvements shall be constructed and finalized and accepted by the appropriate agency prior to the issuance of a Certificate of Occupancy.

Fire Conditions

Applicant Initials _____

- F1. Prior to any construction occurring on any parcel, the applicant shall contact the Fire Department for verification of current fire protection requirements. All new construction shall comply with the current Uniform Fire Code requirements and all applicable statutes, codes, ordinances and standards of the Fire Department.
- F2. Not less than 2 complete sets of Building Plans shall be submitted to the Fire Department for review and approval.
- F3. The applicant shall provide the Fire Department with a letter from the serving water company, certifying that the required water improvements have been made or that the existing fire hydrants and water system will meet distance and fire flow requirements. Fire flow water supply shall be in place prior to placing combustible materials on the job-site.
- F4. Please see attached letter from San Bernardino County Fire Dept. for additional conditions.

Mojave Desert Air Quality Management District Condition

- M1. A "Notification of Demolition/Renovation" application must be completed and submitted to the District pursuant to Health and Safety Code Section 19827.5 for the demolition of any load bearing wall or foundation.

I HEREBY CERTIFY THAT THE APPROVED CONDITIONS OF APPROVAL WILL BE SATISFIED PRIOR TO OR AT THE TIMEFRAMES SPECIFIED AS SHOWN ABOVE. I UNDERSTAND THAT FAILURE TO SATISFY ANY ONE OF THESE CONDITIONS WILL PROHIBIT THE ISSUANCE OF ANY PERMIT OR ANY FINAL MAP APPROVAL.

Applicant's Signature _____ Date _____

Applicant Initials _____

IN THE TOWN OF YUCCA VALLEY
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

PARCEL MAP NO. 19525

BEING A SUBDIVISION OF A PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 6 EAST, S.B.M.

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN ON THIS MAP AND WE CONSENT TO THE PREPARATION AND RECORDATION OF THIS PARCEL MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR STREET AND PUBLIC PURPOSES.

PAUSADE DRIVE AS SHOWN HEREIN.

WAL-MART STORES INC., A DELAWARE CORPORATION

BY: *Dawn Howell* 10/9/14
DATE
TITLE: Director, Land Development

Arkansas
STATE OF CALIFORNIA
COUNTY OF Benton

ON 10/9/2014 BEFORE ME Dawn Howell a NOTARY PUBLIC, PERSONALLY APPEARED Dawn Howell WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND AND OFFICIAL SEAL

SIGNATURE *Dawn Michelle Briggs*

MY COMMISSION EXPIRES ON August 15, 2014

DAWN MICHELLE BRIGGS
NOTARY PUBLIC
Benton County, Arkansas
My Commission Expires 08/15/2014
Commission Number 12703643

PRINCIPAL PLACE OF BUSINESS IN Benton COUNTY.

SIGNATURE OMISSION STATEMENT:

THE SIGNATURES OF SOUTHERN CALIFORNIA EDISON COMPANY, OWNER OF AN EASEMENT FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS, COMMUNICATION SYSTEMS, AND INCIDENTAL PURPOSES, AS DISCLOSED BY DEED RECORDED OCTOBER 31, 2012 AS INSTRUMENT NO. 2012-0453288 OF OFFICIAL RECORDS, SAN BERNARDINO COUNTY AND OF SOUTHERN CALIFORNIA GAS COMPANY, OWNER OF AN EASEMENT FOR GAS LINES AND INCIDENTAL PURPOSES, AS DISCLOSED BY DEED RECORDED APRIL 18, 2013 AS INSTRUMENT NO. 2013-0160679 OF OFFICIAL RECORDS, SAN BERNARDINO COUNTY, HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436, SUBSECTION (A) (3) (A) (3) OF THE SUBDIVISION MAP ACT, SINCE THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE GOVERNING BODY.

TOWN CLERK'S ACCEPTANCE STATEMENT

I, LESLEY COPELAND, TOWN CLERK OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, HEREBY CERTIFY THAT THE TOWN COUNCIL AT ITS REGULAR MEETING HELD ON 10/9/2014 APPROVED THE ANNEXED MAP OF PARCEL MAP NO. 19525 AND ACCEPTS ON BEHALF OF THE PUBLIC THE RIGHT OF WAY FOR PAUSADE DRIVE AS SHOWN HEREIN.

BY: LESLEY COPELAND DATE: _____
TOWN CLERK
TOWN OF YUCCA VALLEY, CALIFORNIA

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF WAL-MART STORES, INC. A DELAWARE CORPORATION, ON SEPTEMBER 1, 2009, AND I HEREBY STATE THAT SAID SURVEY IS TRUE AND COMPLETE AND AS SHOWN AND THAT ALL STAKES, MONUMENTS AND MARKS FOUND TOGETHER WITH THOSE SET ARE OF THE CHARACTER INDICATED AND OCCUPY THE POSITIONS SHOWN THEREON. I WILL SET ALL OTHER MONUMENTS OF CHARACTER AT POSITIONS INDICATED BY THE LEGEND ON THIS MAP WITHIN 30 DAYS AFTER THE ACCEPTANCE OF REQUIRED IMPROVEMENTS, AND ALL SUCH MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS MAP CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

D.K. NASLAND 6-8-2014
D.K. NASLAND, LS 5562 DATE



TOWN ENGINEER'S STATEMENT:

I HEREBY CERTIFY THAT I HAVE EXAMINED THE ANNEXED MAP, AND THAT THE SUBDIVISION SHOWN THEREON IS SUBSTANTIALLY THE SAME AS THE TENTATIVE PARCEL MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREON, AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE HAVE BEEN COMPLIED WITH, AND I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

BY: NOEL OWSELY
TOWN ENGINEER
TOWN OF YUCCA VALLEY, CALIFORNIA
P.L.S. 6972 REGISTRATION EXPIRES 09/30/15

DATE: 10-12-14



AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE REAL PROPERTY SHOWN UPON THE ANNEXED MAP FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES, OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE, ESTIMATED TO BE \$ _____

DATED: _____
LARRY WALKER
AUDITOR/CONTROLLER-RECORDER
COUNTY OF SAN BERNARDINO
BY: _____
DEPUTY

BOARD OF SUPERVISORS' CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED ON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL OR LOCAL AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHO/ AT THE TIME OF FILING OF THE ANNEXED MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY, BUT NOT YET PAYABLE, AND THAT THE SUBDIVIDER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER GIVING HIS ESTIMATE OF THE AMOUNT OF SAID TAXES AND SPECIAL ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

DATED: _____
LAURA H. MELCH
CLERK OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
BY: _____
DEPUTY

RECORDER'S STATEMENT:

THIS MAP HAS BEEN FILED UNDER DOCUMENT NUMBER _____
THIS _____ DAY OF _____, 2014, AT _____ M IN BOOK _____
OF _____ AT PAGE _____, AT THE REQUEST OF D.K. NASLAND,
IN THE AMOUNT OF \$ _____

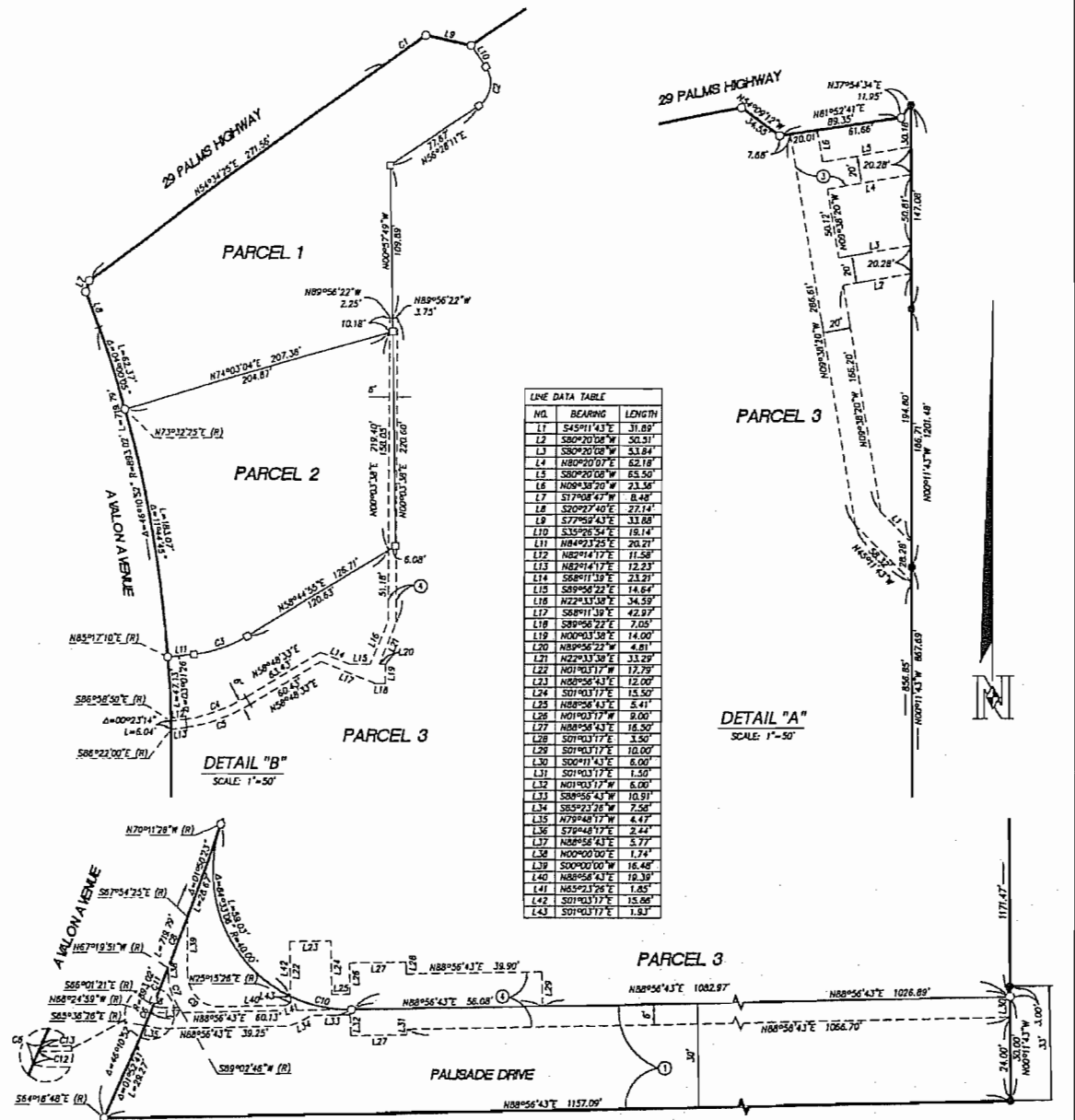
LARRY WALKER
AUDITOR-CONTROLLER/RECORDER
COUNTY OF SAN BERNARDINO
BY: _____
DEPUTY RECORDER



IN THE TOWN OF YUCCA VALLEY
 COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

PARCEL MAP NO. 19525

BEING A SUBDIVISION OF A PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 6 EAST, S.B.M.



LINE DATA TABLE

NO.	BEARING	LENGTH
L1	S45°11'43"E	31.89'
L2	S80°20'08"W	50.91'
L3	S80°20'08"W	33.84'
L4	N80°20'07"E	52.18'
L5	S80°20'08"W	65.50'
L6	N09°38'20"W	23.56'
L7	S17°08'47"W	8.48'
L8	S20°27'40"E	27.14'
L9	S17°09'43"E	33.68'
L10	S15°26'54"E	16.14'
L11	N84°23'25"E	20.21'
L12	N82°14'17"E	11.58'
L13	N82°14'17"E	12.23'
L14	S58°11'39"E	23.21'
L15	S89°56'22"E	14.64'
L16	N22°33'38"E	34.59'
L17	S88°11'39"E	42.97'
L18	S89°56'22"E	7.05'
L19	N00°03'36"E	14.00'
L20	N89°56'22"W	4.81'
L21	N22°33'38"E	33.29'
L22	N01°03'17"E	17.75'
L23	N88°56'43"E	12.00'
L24	S01°03'17"E	15.50'
L25	N88°56'43"E	5.41'
L26	N01°03'17"E	8.00'
L27	N88°56'43"E	16.50'
L28	S01°03'17"E	5.50'
L29	S01°03'17"E	10.00'
L30	S00°11'43"E	6.00'
L31	S01°03'17"E	1.50'
L32	N01°03'17"E	6.00'
L33	S80°56'43"W	10.91'
L34	S85°23'28"W	7.58'
L35	N78°48'17"W	4.47'
L36	S78°48'17"E	2.24'
L37	N88°56'43"E	5.77'
L38	N00°00'00"E	1.74'
L39	S00°00'00"W	16.46'
L40	N88°56'43"E	18.39'
L41	N85°13'26"E	1.85'
L42	S01°03'17"E	15.88'
L43	S01°03'17"E	1.83'

CURVE DATA TABLE

NO.	DELTA	RADIUS	LENGTH
C1	01°02'10"	1832.00'	34.84'
C2	91°45'05"	20.00'	32.09'
C3	25°43'30"	93.00'	42.52'
C4	23°22'45"	118.50'	48.48'
C5	23°22'45"	124.50'	50.91'
C6	09°23'44"	891.50'	61.77'
C7	38°51'16"	15.50'	10.51'
C8	01°01'14"	891.02'	15.91'
C9	91°03'17"	8.50'	15.10'
C10	28°18'43"	42.00'	18.37'
C11	00°46'38"	891.02'	12.11'
C12	00°18'51"	891.02'	4.03'
C13	00°08'15"	891.02'	2.14'

- EASEMENTS:**
- AN EASEMENT FOR ROAD PURPOSES, AND RIGHTS INCIDENTAL THEREO AS SET FORTH IN A DOCUMENT TO THE COUNTY OF SAN BERNARDINO, RECORDED DECEMBER 12, 1974 IN BOOK 8575, PAGE 814 OF OFFICIAL RECORDS.
 - AN EASEMENT FOR ROADWAY AND PUBLIC UTILITY PURPOSES AND RIGHTS INCIDENTAL THEREO AS SET FORTH IN A DOCUMENT TO THE TOWN OF YUCCA VALLEY, RECORDED JANUARY 3, 1999, AS INSTRUMENT NO. 99-022409 OF OFFICIAL RECORDS.
 - AN EASEMENT FOR THE PURPOSE OF PIPELINES AND RIGHTS INCIDENTAL THEREO AS SET FORTH IN A DOCUMENT TO W-DESERT WATER DISTRICT, RECORDED JULY 24, 2007, AS INSTRUMENT NO. 07- 4332 13 AND AUGUST 9, 2007 AS INSTRUMENT NO. 07-466102 OF OFFICIAL RECORDS.
 - AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY, FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS, COMMUNICATION SYSTEMS, AND INCIDENTAL PURPOSES, AS SET FORTH IN A DOCUMENT RECORDED OCTOBER 31, 2012, AS INSTRUMENT NO. 2012-0453708 OF OFFICIAL RECORDS.
 - AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA GAS COMPANY, FOR GAS LINES, AND INCIDENTAL PURPOSES, AS SET FORTH IN A DOCUMENT RECORDED APRIL 18, 2013, AS INSTRUMENT NO. 2013-0162679 OF OFFICIAL RECORDS. (NOT PLOTTABLE)

Nasland
 4742 Bufile Drive, San Diego, California 92111 619.263.2770
 Civil Engineering Surveying Land Planning

PARCEL MAP 19525

SUBDIVISION IMPROVEMENT AGREEMENT

by and between

TOWN OF YUCCA VALLEY

and

WAL-MART STORES, INC.

PARCEL MAP 19525
SUBDIVISION IMPROVEMENT AGREEMENT

THIS SUBDIVISION IMPROVEMENT AGREEMENT (this “Agreement”) is entered into this 18th day of June, 2014, by and between the TOWN OF YUCCA VALLEY, a municipal corporation of the State of California (“Town”) and **WAL-MART STORES, INC.**, (“Subdivider”).

RECITALS

A. Subdivider is the owner of, and has recorded a final subdivision map (the “Map”) for Parcel Map 19525 project in the Town of Yucca Valley, County of San Bernardino, State of California (the “Property” or “Parcel Map 19525”). Information regarding Parcel Map 19525, including recording information is listed on **Exhibit “A”** hereto, together with the associated number of commercial lots contained in Parcel Map 19525.

B. Subdivider, by the Map, has offered for dedication to Town for public use of the streets and easements shown on the Map. Town desires to accept the streets and easements shown on the Map for public use, and certain other improvements described in this Agreement.

C. Subdivider has delivered to Town and Town has approved plans and specifications and related documents for certain “Works of Improvement” (as hereinafter defined) which are required to be constructed and installed in order to accommodate the development of the Property. The Works of Improvement may be allocated, or phased, with respect to the Map, such that specific subsets of the Works of Improvement are required to be completed for the Map, as required by the conditions of approval (“Conditions of Approval”), as set forth in **Exhibit “B”**.

D. Pursuant to the California Subdivision Map Act and Town Ordinances, Subdivider is required to furnish adequate security to ensure the construction and completion of the Works of Improvement required by the Map. Subdivider is requesting that Town accept security as set forth herein and the Town has determined to accept such security for the Works of Improvement as provided herein.

E. Subdivider’s agreement to construct and install the Works of Improvement pursuant to this Agreement and its offer of dedication of the streets, easements and other improvements and facilities, as shown on the Map, are a material consideration to Town in approving the final subdivision map for the Property and permitting development of the Property to proceed.

COVENANTS

Based upon the foregoing Recitals which are incorporated herein by reference and in consideration of Town's approving the Map for the Property and permitting development of the Property to proceed, Subdivider agrees to timely perform all of its obligations as set forth herein.

1. Construction Obligations.

1.1. Works of Improvement. Subdivider agrees, at its sole cost and expense, to construct or install or cause to be constructed or installed streets, drainage, utility and other improvements as allocated to Parcel Map 19525 or phase of Parcel Map 19525 covered by the Map and all of the remaining Conditions of Approval on the tentative map, collectively referred to as the "Works of Improvement." The Works of Improvement shall be performed or caused to be performed by Subdivider in accordance with the Conditions of Approval as set forth in **Exhibit B** and in a manner reasonably acceptable to the Town Engineer (or his/her designee) and in full compliance with all rules, regulations and codes of Town and the terms of this Agreement and any plans ("Plans") for the Works of Improvement approved by the Town Engineer.

Subdivider shall complete a functional or operable improvement or facility, even though the Plans may not specifically call out all items of work required for the contractor to complete its tasks, incidental appurtenances, materials, and the like. If any omissions are made in information necessary to carry out the full intent and meaning of the Plans, Subdivider or its contractor shall immediately notify its design engineer who will seek approval of the Town Engineer for furnishing of detailed instructions. In the event of any doubt or question arising regarding the true meaning of any of the Plans, reference shall be made to the Town Engineer or Town Council, if Subdivider disputes the Town Engineer's detailed instructions.

The Plans shall be supplemented by such working or shop drawings as are necessary to adequately control the work. Without the Town Engineer's prior written approval, no change shall be made by Subdivider or Subdivider's contractor to any plan, specification, or working or shop drawing after it has been stamped as approved.

1.2. Survey Monuments. Before final approval of street improvements, Subdivider will place survey monuments, as shown on the Map in accordance with the provisions of the State Subdivision Map Act and the Subdivision Ordinance of the Town. Subdivider shall provide security for such obligation as provided in Section 4.1 and, after setting the monument (s), Subdivider shall furnish the Town Engineer of the Town written notice of the setting of said monuments, and written proof of having paid the engineer or surveyor for the setting of said monument (s).

1.3. Performance of Work. Subdivider shall furnish or cause to be furnished, at Subdivider's sole cost (unless otherwise specifically provided herein), all materials, labor, tools, equipment, utilities, transportation, and incidentals required to perform Subdivider's obligations under this Agreement.

1.4. Changes in the Work. The Town Engineer, without invalidating this Agreement and without notification to any of the sureties or financial institutions referenced in Section 4, may order extra work or may make changes by altering or deleting any portion of the

Works of Improvement as specified herein or as deemed necessary or desirable by the Town Engineer as determined necessary to accomplish the purposes of this Agreement and to protect the public health or safety. It is mutually understood that it is inherent in the nature of the work contemplated by this Agreement that some changes in the Plans may be necessary during the course of construction to adjust them to field conditions and to assure the protection of the public health or safety. The Town Engineer shall notify Subdivider or Subdivider's contractor in writing (by Correction Notice) at the time a determination has been made to require changes in the work. No field changes performed or proposed by Subdivider or its contractor shall be binding on Town unless approved in writing by the Town Engineer.

1.5. Defective Work. Subdivider shall cause its contractor to repair, reconstruct, replace, or otherwise make acceptable any work found by the Town Engineer to be defective.

1.6. No Warranty by Town. The Plans for the Works of Improvement have been prepared by or on behalf of Subdivider or its consultants or contractors, and Town makes no representation or warranty, express or implied, to Subdivider or to any other person regarding the adequacy of the Plans or related documents.

1.7. Authority of the Town Engineer. In addition to the authority granted to the Town Engineer elsewhere in this Agreement, the Town Engineer shall have the authority, which shall reasonably be exercised, to decide all questions which may arise as to the quality and acceptability of materials furnished and work performed.

1.8. Documents Available at the Job Site. Subdivider shall cause its contractor to keep a copy of all approved Plans at the job site on a phase by phase basis as those portions of the Property are improved, and shall give access thereto to the Town's inspectors and engineers at all times.

1.9. Inspection. Subdivider shall have an authorized representative on the job site at all times during which work is being done who has full authority to act for Subdivider, or its design engineer, and Subdivider's contractors regarding the Works of Improvement. Subdivider shall cause its contractor to furnish the Town with every reasonable facility for ascertaining whether or not the Works of Improvement as performed are in accordance with the requirements and intent of this Agreement, including the Plans. If the Town inspector requests it, the contractor at any time before acceptance of the Works of Improvement shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the contractor shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the Town shall not be considered as direct control of the individual workmen on the job site. Town's inspector shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement.

The inspection of the work by Town shall not relieve Subdivider or the contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

1.10. Compliance With Law. In addition to the express provisions of this Agreement and the Plans, Subdivider shall cause construction of the Works of Improvement to be completed in accordance with all other applicable federal, state, and local laws, ordinances, rules, regulations and policies.

1.11. Suspension of Work. In case of suspension of work for any cause whatever, Subdivider and its contractor shall be responsible for all materials and shall store them properly if necessary and shall provide suitable drainage protection and erect temporary structures where necessary.

1.12. Maintenance of Job Site and Works of Improvement. Town shall not be responsible or liable for the maintenance or care of the job site or the Works of Improvement. Subdivider shall maintain all the job site and Works of Improvement in a state of good repair until they are completed by Subdivider and approved and accepted by Town, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to Town; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements.

All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The Town Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters.

It shall be Subdivider's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by Town. If Subdivider fails to properly prosecute its maintenance obligation under this section, Town may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Subdivider and its surety under this Agreement. Town shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the conditions of the job site or Works of Improvement.

1.13. Final Acceptance of Works of Improvement. After Subdivider's contractor has completed all of the Works of Improvement allocable to Parcel Map 19525 or phase of Parcel Map 19525, as appropriate, Subdivider shall then request a final inspection of the work for Parcel Map 19525 or phase of Parcel Map 19525. Town shall inspect the Works of Improvement within seven (7) days of Subdivider's request. If items are found by the inspector to be incomplete or not in compliance with this Agreement or any of the requirements contained or referenced herein, Town will inform the contractor of such items within five (5) days of inspection, in writing. After the contractor has completed these items, the procedure shall then be the same as specified above for the contractor's initial request for final inspection. If items are found by Town's inspector to be incomplete or not in compliance after two (2) "final"

inspections, Town may require the contractor, as a condition to performing further field inspections, to submit in writing a detailed written statement of the work performed subsequent to the date of the previous' inspection which was found to be incomplete or not in compliance at that time. Town may also require Subdivider to pay all costs associated with any field inspections conducted after two (2) final inspections.

No inspection or acceptance pertaining to specific parts of any particular Work of Improvement shall be construed as final acceptance of any part until the overall final acceptance by Town is made. Final acceptance shall not constitute a waiver by Town of defective work subsequently discovered.

The date on which the Works of Improvement will be considered as complete shall be that date on which the Town accepts the improvements and authorizes the Town Clerk to record a Notice of Completion with respect thereto. A separate Notice of Completion may be recorded for each phase of Parcel Map 19525.

1.14. Permits. Subdivider, at Subdivider's expense, shall obtain all permits and licenses, give all notices and pay all fees required by law for the construction of the Works of Improvement. Town shall promptly process all permits and licenses.

2. Time For Performance.

2.1. Commencement and Completion Dates. Subject to Sections 2.2 and 2.3 below, Subdivider shall (i) commence with construction and installation of the Works of Improvement for Parcel Map 19525 in a logical sequence as reasonably approved by the Town ("Commencement Date"), and once construction or development of Parcel Map 19525 is actually started ("Commencement Date"); (ii) complete or cause to be completed all of the Works of Improvement associated with Parcel Map 19525 no later than ____ () ____ (the "Completion Deadline Date") after the Commencement Date.

2.2. Phasing Requirements. The allocation of Works of Improvement and anticipated sequencing for Parcel Map 19525 is set forth on **Exhibit "B"** hereto. Notwithstanding the provisions of Section 2.1, Town reserves the right to control and regulate completion of specific Works of Improvement as required to comply with applicable Town ordinances, regulations, rules and policies relating to the timely provision of public services and facilities. In addition to whatever other remedies Town may have for Subdivider's failure to satisfy such phasing requirements, as the same now exist or may be amended from time to time, Subdivider acknowledges Town's right (i) to withhold the issuance of further building permits for Parcel Map 19525 or particular phase of Parcel Map 19525 until the associated phasing requirements are satisfied (ii) proceed against the security provided in Section 4.1, and/or (iii) proceed with reversion to acreage pursuant to Section 2.5. Prior to issuance of building permits, Subdivider shall provide satisfactory evidence that all applicable requirements that are a condition to issuance of building permits have been satisfied. Such requirements may include the payment of fees, construction of improvements, or both.

2.3. Force Majeure. Notwithstanding the provisions of Section 2.1, Subdivider's time for commencement and completion of the Works of Improvement shall be

extended for the period of any enforced delay caused due to circumstances beyond the control and without the fault of Subdivider, including to the extent applicable adverse weather conditions, flood, earthquakes, strikers, lockouts, acts or failures to act of a public agency (including Town), required changes to the Works of Improvement required by Town, and similar causes; provided, however, that the period of any enforced delay hereunder shall not include any period longer than ten (10) days prior to Town's receipt of a written notice from Subdivider or its Contractor detailing the grounds for Subdivider's claim to a right to extend its time for performance hereunder and meeting this requirement hereof.

2.4. Continuous Work. After commencement of construction of the Works of Improvement (or separable portion or phase thereof), Subdivider shall cause such work to be diligently pursued to completion, and shall not abandon the work for a consecutive period of more than thirty (30) days, events of force majeure excepted.

2.5. Reversion to Acreage. In addition to whatever other rights Town may have due to Subdivider's failure to timely perform its obligations hereunder, Subdivider recognizes that Town reserves the right to revert the Property to acreage subject to the limitations and requirements set forth in California Government Code Sections 66499.11-66499-203/4. In this regard, Subdivider agrees that if the Works of Improvement have not been completed on or before the Completion Deadline Date of ____ (___) [days/months/years] within the time allowed herein, whichever is the later. If Town thereafter initiates proceedings to revert the Property to acreage, any improvements made by or on behalf of Subdivider after the date Town initiates such action may not be considered in determining Town's authority to revert the Property to acreage.

2.6. Time of the Essence. Time is of the essence of Subdivider's and Town's performance of all of their respective obligations under this Agreement,

3. Labor.

3.1. Labor Standards. Subdivider shall be responsible for causing all contractors and subcontractors performing any of the Works of Improvement to comply with all applicable federal and state labor standards, including to the extent applicable the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor.

3.2. Nondiscrimination in Employment. The Subdivider covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Property or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by Subdivider without regard to race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, et seq., 42 U.S.C. § 1981, the California Fair Employment and Housing Act, California Government Code § 12900, et seq., the California

Equal Pay Law, California Labor Code § 1197.5, California Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

3.3. Licensed Contractors. Subdivider shall cause all of the Works of Improvement to be constructed by contractors and subcontractors with valid California Contractors licenses for the type of work being performed and having Town business licenses.

3.4. Workers' Compensation. Subdivider shall cause every contractor and subcontractor performing any of the Works of Improvement to carry Workers' Compensation Insurance as required by the Labor Code of the State of California and shall cause each such contractor and subcontractor to submit to Town a Certificate of Insurance verifying such coverage prior to such contractor or subcontractor entering onto the job site.

4. Security.

4.1. Required Security.

(a) Lien on Property. Subdivider shall cause to be recorded a covenant agreement for the benefit of the Town permitting enforcement by the Town through a lien on the Property in form and content to the satisfaction of the Town Attorney ("Lien"). Said Lien shall encumber the Property and shall contain appropriate provisions for the serial release of one or more phases as construction and development is commenced on each phase of Parcel Map 19525, as appropriate and the substitute security described in Section 4.1(b) is substituted therefore or the appropriate Works of Improvement are completed and accepted by the Town.

(b) Performance and Payment. Subdivider may furnish to Town the following bonds, letters of credit, instruments of credit (assignment of deposit account), in substitute of liens on Parcel Map 19525 or phase of Parcel Map 19525, or other security reasonably acceptable to Town as provided in California Government Code Section 66499 as such section may be amended, and satisfying the requirements of the applicable provisions of this Section 4 with respect to that phase (hereinafter "Security Instruments"):

(i) A Security Instrument securing Subdivider's faithful performance of all of the Works of Improvement ("Faithful Performance Security Instrument"), in the amount of one hundred percent (150%) of the estimated construction costs for Parcel Map 19525 or the applicable phase of Parcel Map 19525, as described in Section 1.1 and **Exhibit "B."**

(ii) A Security Instrument guaranteeing the payment to contractors, subcontractors, and other persons furnishing labor, materials, and/or equipment ("Labor and Materials Security Instrument") with respect to the Works of Improvement in an amount equal to one hundred percent (150%) of the estimated construction cost for Parcel Map 19525 or the applicable phase of Parcel Map 19525, as described in Section 1.1 and **Exhibit "B."**

(iii) A Security Instrument guaranteeing the payment of the cost of setting monuments as required in Section 1.2 in the amount shown on **Exhibit “B”** for Parcel Map 19525 or each respective phase of Parcel Map 19525.

[NOTE: 125 % if to be done within 2 years; 150% if to be done within 5 years.]

(c) CFD Improvements. Town and Subdivider may form a California Community Facilities District (“CFD”) and sell bonds to finance certain Works of Improvements for the Property and other public facilities authorized by law (“CFD Facilities”). If the CFD is formed and bonds sold, the Town shall recognize any components of Works of Improvement for Parcel Map 19525 or any phase of Parcel Map 19525 which are CFD Facilities, although these Works of Improvement may also be covered by improvement bonds in connection therewith. Town and Subdivider acknowledge that only portions of the required Works of Improvement for Parcel Map 19525 or any phase of Parcel Map 19525 may qualify as CFD Facilities.

4.2. Form of Security Instruments. All Security Instruments shall be in the amounts required under Section 4.1, as applicable, shall meet the following minimum requirements and otherwise shall be in a form provided by Town or otherwise approved by the Town Attorney:

(a) Bonds. For Security Instruments provided in the form of bonds, any such bonds must be issued and executed by an insurance company or bank authorized to transact surety business in the State of California. Any insurance company acting as surety shall have a minimum rating of A-IX, as rated by the current edition of Best’s Key Rating Guide published by A.M. Best’s Company, Oldwick, New Jersey, 08858. Any bank acting as surety shall have a minimum rating of AA, as rated by Moody’s or Standard & Poor’s.

(b) Letters of Credit. For Security Instruments which are letters of credit, any letter of credit shall be an original separate unconditional, irrevocable, negotiable and transferable commercial letter of credit issued by a financial institution with offices in the State of California acceptable to Town. Any such letter of credit shall specifically permit Town to draw on same by the unilateral certification of the Town Engineer that Subdivider is in default under its payment or performance obligations hereunder or in the event Subdivider fails to deliver a replacement letter of credit not less than thirty (30) days prior to the date of expiration of any such letter of credit and shall further be subject to the provisions of Section 4.4. For Security Instruments which are Instruments of Credit, any Instrument of Credit shall be an assignment of deposit account assigning as security to Town all of Subdivider’s interest in funds on deposit in one or more bank accounts with financial institutions acceptable to Town.

(c) Lien on Property. For Security Instruments which are liens on property, a covenant agreement shall be recorded against the property permitting enforcement by the Town through a lien on the property. In such case the value of the property must substantially exceed the cost of the Work of Improvement, as verified by appraisal, and the Town Attorney must conclude that (i) the foreclosure in a viable remedy given all security interests and (ii) other forms of security are less desirable.

(d) General Requirements For All Security Instruments. Payments under any Security Instrument shall be required to be made (and, with respect to bonds, litigation shall be required to be instituted and maintained) in the County of San Bernardino, State of California (and the Security Instrument shall so provide).

(i) Each Security Instrument shall have a minimum term of one (1) year after the deadline for Subdivider's completing the Works of Improvement, in accordance with Section 2.1 (other than liens on property, which shall have no defined term or expiration date).

(ii) Each Security Instrument shall reference Subdivider's obligations under this Agreement, shall be irrevocable, and shall include as an additional secured obligation the responsibility to compensate Town for all of Town's attorneys' fees and litigation expenses reasonably incurred in enforcing its rights under the Security Instrument.

(iii) Each Security Instrument shall provide that changes may be made in the Works of Improvement pursuant to the terms of this Agreement without notice to any issuer or surety and without affecting the obligations under such Security Instrument.

(iv) A final executed original of each Security Instrument shall be delivered to the Town Clerk within three (3) days of execution of said Security Instrument.

4.3. Subdivider's Liability. While no action of Subdivider shall be required in order for Town to realize on its security under any Security instrument, Subdivider agrees to cooperate with Town to facilitate Town's realization under any Security Instrument, and to take no action to prevent Town from such realization under any Security Instrument. Notwithstanding the giving of any Security Instrument or the subsequent expiration of any Security Instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Subdivider shall be liable for performance under this Agreement and for payment of the cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after written demand therefore, deliver to Town such substitute security as Town shall require satisfying the requirements in this Section 4.

4.4. Letters of Credit.

(a) In the event a letter of credit is given pursuant to Section 4.2 (b), Town shall be entitled to draw on any such letter of credit if a replacement letter of credit (expiring in not less than one (1) year, unless Town agrees to a lesser term in Town's sole and absolute discretion) is not delivered not less than thirty (30) days prior to the expiration of the original letter of credit, such substitute letter of credit being in the same amount and having the terms and conditions as the initial letter of credit delivered hereunder, issued by a financial institution acceptable to Town as of the date, of delivery of the replacement letter of credit.

(b) In the event of draw by the Town on a letter of credit, the Town may elect, in its sole and absolute discretion, to apply any such funds drawn to the obligations secured by such letter of credit or to hold such funds in an account under the control of the Town, with no interest accruing thereon for the benefit of Subdivider. If the Town elects to hold

the funds in an account pursuant to the foregoing, Town may thereafter at any time elect instead to apply such funds as provided in the foregoing. Subdivider agrees and hereby grants Town a security interest in such account to the extent required for Town to realize on its interests therein and agrees to execute and deliver to Town any other documents requested by Town in order to evidence the creation and perfection of Town's security interest in such account.

4.5. Release of Security Instruments.

(a) Town shall release the Faithful Performance Security Instrument and Labor and Materials Security Instrument for Parcel Map 19525 or any particular phase of Parcel Map 19525 when all of the following have occurred:

(i) Subdivider has made written request for release and provided evidence of satisfaction of all other requirements in this section;

(ii) the Works of Improvement have been accepted and a Notice of Completion has been recorded; and

(iii) subject to the following sentences after passage of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code or as such may be amended. If lien claims have been timely filed, Town shall hold the Labor and Materials Security Instrument until such claims have been resolved, Subdivider has provided a statutory bond, or otherwise as required by applicable law.

(b) Town shall within ten (10) days release any Lien when the items in Section 4.5(a) have occurred. In such a situation, Town shall promptly execute and record a release of the Lien.

5. Cost of Construction and Provision of Inspection Service.

5.1. Subdivider Responsible for All Costs of Construction. Subdivider shall be responsible for payment of all costs incurred for construction and installation of the Works of Improvement, provided that part or all of the Works of Improvement may be financed through a CFD. In the event Subdivider is entitled to reimbursement from a CFD or other source for any of the Works of Improvement, such reimbursement shall be subject to a separate Reimbursement Agreement to be entered into between Subdivider and Town prior to construction of the Works of Improvement. The Reimbursement Agreement shall determine other property to be benefitted and the reimbursement formula. Town will agree to collect pro rata share for future development for up to ten (10) years, but shall not incur any liability for any failure to collect.

5.2. Payment To Town For Costs. Subdivider shall compensate Town for all of Town's costs reasonably incurred (i) in having its authorized representative make the usual and customary inspections of the Works of Improvement, (ii) for all design, plan check and evaluation of any proposed or agreed-upon changes in the work, and (iii) attorney costs for preparation of all necessary documents. In addition, Subdivider shall make such customary payments and deposits prior to the inspections of the Works of Improvement. The procedures for deposit and payment of such fees shall be as established by the Town. In no event shall

Subdivider be entitled to additional inspections or a final inspection and acceptance of any of the Works of Improvement until all Town fees and charges have been fully paid, including without limitation, charges for applicable penalties and additional required inspections.

6. Acceptance of Offers of Dedication. Subdivider shall provide irrevocable offers of dedication for all property on which the Works of Improvement are to be located, and all other rights of way or easements required by the Conditions of Approval for the benefit of the public. The Town Council shall pass an appropriate resolution or resolutions accepting all offers of dedication shown on each Map for the Property, upon completion and acceptance by Town of the Works of Improvement. Such resolutions shall authorize the Town Clerk to execute the Certificate made a part of the Map regarding said acceptance of the offer of dedication.

7. Warranty of Work. Subdivider shall guarantee all Works of Improvement against defective materials and workmanship for a period of one (1) year from the date of the Notice of Completion is recorded for Parcel Map 19525 or phase of Parcel Map 19525. If any of the Works of Improvement should fail or prove defective within said one (1) year period due to any reason other than improper maintenance, or if any settlement of fill or backfill occurs, or should any portion of the Works of Improvement fail to fulfill any requirements of the Plans, Subdivider, within fifteen (15) days after written notice of such defects, or within such shorter time as may reasonably be determined by the Town in the event of emergency, shall commence to repair or replace the same together with any other work which may be damaged or displaced in so doing. Should Subdivider fail to remedy defective material and/or workmanship or make replacements or repairs within the period of time set forth above, Town may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Subdivider. The warranty provided herein shall not be in lieu of, but shall be in addition to, any warranties or other obligations otherwise imposed by law. Upon expiration of this warranty period, Subdivider shall have no liability which may arise concerning operation and use of the Works of Improvement. Subdivider agreements with designers, contractors and subcontractors shall have substantially similar warranties making Town a third party beneficiary.

8. Default.

8.1. **Enforcement.** If Subdivider refuses or fails to obtain prosecution of the Works of Improvement, or any severable part thereof, with such diligence as will ensure its completion within the time specified in this Agreement, or any extensions thereof, or fails to obtain completion of the work within such time, or if Subdivider is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed by reason of Subdivider's insolvency or default under a deed of trust, or if Subdivider, or any of the Subdivider's contractors, subcontractors, agents or employees, should violate any of the provisions of this Agreement, the Town Engineer or Town Council may serve written notice upon Subdivider and Subdivider's surety, if any has been selected pursuant to this Agreement, of breach of this Agreement, or of any portion thereof, and default of Subdivider ("Default Notice"). The Default Notice must set forth the nature of the breach or failure and the actions, if any, required by Subdivider to cure such breach or failure. Subdivider shall be deemed in "default" under this Agreement, where: (i) said breach or failure can be cured, but the Subdivider has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the

provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

8.2. Breach of Agreement, Performance by Surety. In the event of any Default Notice, Subdivider's surety, if any has been selected pursuant to this Agreement, shall have the duty to take over and complete the Works of Improvement. If the surety, within fifteen (15) days after the serving upon it of such Default Notice, does not give the Town written notice of its intention to take over the performance of the contract, does not commence performance thereof within thirty (30) days after notice to the Town of such election, does not diligently complete performance, or suspends or abandons performance for thirty (30) days after having commenced such performance, then the Town may take over the Work of Improvement and prosecute the same to completion, by contract or by any other method the Town may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety if any has been selected pursuant to this Agreement, shall be liable to the Town for any cost or damages occasioned the Town thereby, including interest at the rate permitted by law from the date the Town demands payment of such cost, and including reasonable attorney's fees incurred by the Town in enforcing Subdivider's obligations pursuant to this Agreement.

8.3. Breach of Agreement: Holders other than Surety. In the event the Security Instrument is other than a bond, at the expiration of the period for cure provided in the Default Notice provided pursuant to Section 8.1 above, and if cure has not been completed, Town may do the following:

(a) If security is the real property, Town may take the enforcement actions specified in the deed of trust, covenants and conditions, or other recorded instrument to establish and collect the lien.

(b) If the security is a cash deposit with the Town or instrument of credit with a financial institution, Town shall have the right to withdraw such sums as the Town finds necessary to pay the actual cost of performing the Work of Improvement, including but not limited to costs of materials, labor, contractors, architects, engineers, consultants, and attorneys, as well as fifteen percent (15%) overhead factor to pay Town's administrative and associated costs. Subdivider shall have no right to approve or prevent withdrawal but shall have the right to sue Town for damages or injunctive relief if Town's withdrawal of the monies is unjustified.

8.4. Breach of Agreement; Actions by Town. Following Default Notice and Subdivider's failure to timely cure a default, and if the surety fails to perform under Section 8.2, or, if no surety, then if Town elects to levy on any other security under Section 8.3, then in such event, the Town, without liability for so doing, may take possession of, and utilize in completing the Work of Improvement of such materials, appliances, plant and other property belonging to Subdivider as may be on the job site of the Work of Improvement and necessary therefore.

8.5. Additional Subdivision Remedies for Breach. In addition to any other remedies set forth in this Agreement for breach or default of this Agreement by Subdivider, the Town may, in its discretion, elect to use the Subdivision Map Act remedies including causing to be filed for record with the County Recorder a notice of intention to record a notice of violation of the terms of this Agreement.

8.6. Remedies Not Exclusive. In any case where this Agreement provides a specific remedy to Town for a default by Subdivider hereunder, such remedy shall be in addition to, and not lieu of, Town's right to pursue any other administrative, legal, or equitable remedy to which it may be entitled.

8.7. Attorney's Fees and Costs. In the event that Subdivider or Town fails to perform any obligation under this Agreement, Subdivider or Town agrees to pay all costs and expenses incurred by Subdivider or Town in securing performance of such obligations, including costs of suit and reasonable attorney's fees. In the event of any dispute arising out of Subdivider's or Town's performance of its obligations under this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and costs shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

9. Indemnity. During the one (1) year warranty period established in Section 7 of this Agreement, Subdivider agrees to indemnify, defend, and hold harmless Town and Town's officers, employees, and agents from and against any and all claims, liabilities, losses, damages, causes of action, and obligations arising out of Subdivider's performance of or failure to perform the construction and installation of the Works of Improvement in accordance with the requirements contained or referenced in this Agreement. Said indemnity obligation shall apply to personal injury, death, property damage, economic loss, and any other monetary damage or penalty to which Town may be subjected, including without limitation, attorneys' fees and costs and the costs of realizing on any Security Instrument provided by Subdivider pursuant to the terms hereof.

10. General Provisions.

10.1. Obligation to Refrain from Discrimination. The Subdivider covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, national origin, gender, sexual orientation, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Subdivider itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land.

(a) The Subdivider shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, creed, religion, sex, marital status, handicap, national origin, gender, sexual orientation, or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(i) In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, national origin, gender, sexual orientation, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

(ii) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, handicap, ancestry, gender, sexual orientation, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.”

(iii) In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, handicap, gender, sexual orientation, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claim under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

10.2. Assignment; Successors and Assigns. This Agreement may be assigned by Subdivider to any party upon prior written consent of the Town, which consent may not be unreasonably withheld. This Agreement shall be binding upon all successors and assigns to Subdivider’s right, title, and interest in and to the Property and any portion thereof, so that all rights and obligations set forth in this Agreement shall run with the Property subject to each and all of the Maps.

10.3. No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither Town nor Subdivider intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

10.4. Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all

negotiations and previous agreements between the parties with respect to all or any part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

10.5. Cooperation and Good Faith. This Agreement contemplates a series of actions, approvals and other administrative decisions to implement its provisions and construct the Works of Improvements. The parties hereto shall cooperate reasonably and in good faith to timely achieve the purposes of this Agreement for the mutual benefit of the Town and Subdivider.

10.6. Authority to Enter Agreement. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

[SIGNATURES ON FOLLOWING PAGE]

“TOWN”

TOWN OF YUCCA VALLEY,
CALIFORNIA, a municipal corporation

Shane R. Stueckle, Acting Town Manager

ATTEST:

Lesley Copeland, Town Clerk

APPROVED AS TO FORM:

Lona N. Laymon, Esq., Town Attorney

“SUBDIVIDER”

WAL-MART STORES, INC.

Signature

Print Name

Title

Address: _____

EXHIBIT "A"

SUBDIVISION IMPROVEMENT AGREEMENT – PARCEL MAP 19525

Legal Description of Property

BEING A SUBDIVISION OF A PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 NORTH, RANGE 6 EAST, S.B.M.

EXHIBIT "A" - CONTINUED

SUBDIVISION IMPROVEMENT AGREEMENT – PARCEL MAP 19525

TRACT INFORMATION

Tract No.

Approved Commercial Units

Parcel Map 19525

3

PARCEL MAP 19525 A DIVISION OF 26 ACRES INTO THREE (3) COMMERCIAL PARCELS AND AN EASEMENT DEDICATED FOR STREET AND PUBLIC UTILITY PURPOSES ON PALISADE DRIVE; AND RECORDED IN BOOK _____, PAGE(S) _____ OF MAPS, RECORDS OF SAN BERNARDINO COUNTY.

Planning Commission: March 11, 2014
TOWN OF YUCCA VALLEY
COMMUNITY DEVELOPMENT DEPARTMENT
CURRENT PLANNING DIVISION STAFF REPORT
PANDA EXPRESS-TACO BELL

Case: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
 TENTATIVE PARCEL MAP, TPM 19525
 PANDA EXPRESS-TACO BELL
 EIR STATE CLEARINGHOUSE # 2004071127

Request: PROPOSAL TO SUBDIVIDE APPROXIMATELY 26 ACRES OF
 COMMERCIAL ZONED PROPERTY INTO THREE PARCELS OF 0.84
 ACRE, 0.75 ACRE AND 23.88 ACRES AND TO CONSTRUCT A 2,230
 SQUARE FOOT PANDA EXPRESS AND A 2,423 SQUARE FOOT TACO
 BELL.

Applicant for CUP:
 CFT DEVELOPMENTS, LLC
 1683 WALNUT GROVE AVE
 ROSEMEAD, CA 91770

Representative:
 GARY WANG AND ASSOCIATES
 1255 CORPORATE DR, SUITE 8
 MONTEREY PARK, IRVINE, CA 92612

Applicant for TPM:
 WAL-MART STORES, INC
 201 S.E. 10TH STREET
 BENTONVILLE, AR 72716-0550

Representative
 NASLAND ENGINEERING
 4740 RUFFNER STREET
 SAN DIEGO, CA 92111

Property Owner:
 WAL-MART STORES, INC
 201 S.E. 10TH STREET
 BENTONVILLE, AR 72716-0550

Division Approvals: Engineering _____ Building & Safety _____ Public Works _____

Location: THE PROJECT IS LOCATED AT THE SOUTHEAST CORNER OF 29
PALMS HWY AND AVALON AVE, AND IS FURTHER IDENTIFIED AS
APN: 601-201-37.

Existing General Plan Land Use Designation:
THE SITE IS DESIGNATED COMMERCIAL (C)

Existing Zoning Designation:
THE SITE IS DESIGNATED GENERAL COMMERCIAL (C-G),
YUCCA VALLEY RETAIL SPECIFIC PLAN, S-01-04

Surrounding General Plan Land Use Designations:
NORTH: COMMERCIAL AND MED HIGH DENSITY RESIDENTIAL
(MHDR) 8.1-14
SOUTH: COMMERCIAL (C)
WEST: COMMERCIAL (C)
EAST: COMMERCIAL (C)

Surrounding Zoning Designations:
NORTH: GENERAL COMMERCIAL AND RESIDENTIAL SINGLE
FAMILY, 5 UNITS PER ACRE, (RS-5)
SOUTH: GENERAL COMMERCIAL (C-G), YUCCA VALLEY RETAIL
SPECIFIC PLAN, S-01-04 AND INDUSTRIAL
WEST: GENERAL COMMERCIAL (C-G),
EAST: GENERAL COMMERCIAL (C-G), HOME DEPOT RETAIL
CENTER SPECIFIC PLAN, S 01-05

Surrounding Land Use:
NORTH: RESIDENTIAL DWELLINGS AND VACANT LAND
SOUTH: SUPER WAL-MART, VACANT LAND
WEST: AVALON URGENT CARE
EAST: HOME DEPOT

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):
THE REVIEW AND APPROVAL OF THE YUCCA VALLEY RETAIL
SPECIFIC PLAN INCLUDED A PROGRAM ENVIRONMENTAL IMPACT
REPORT (EIR), STATE CLEARINGHOUSE #2004071127. THE EIR
EVALUATED FUTURE PROJECTS WITHIN THE BOUNDARIES OF THE
YUCCA VALLEY RETAIL SPECIFIC PLAN. THE PROPOSED
PROJECT WAS EVALUATED TO DETERMINE IF ADDITIONAL CEQA
DOCUMENTATION NEEDED TO BE PREPARED. THE PROPOSED
PROJECT WILL NOT HAVE ANY EFFECTS NOT CONSIDERED
WITHIN THE SCOPE OF THE PROGRAM EIR. THE PROJECT IS
CONSISTENT WITH PROGRAM EIR AND WILL NOT CREATE ANY

ADDITIONAL IMPACTS NOT PREVIOUSLY CONSIDERED. NO
ADDITIONAL ENVIRONMENTAL REVIEW IS REQUIRED.

OUTSIDE AGENCIES COMMENTS RECEIVED

SAN BERNARDINO COUNTY FIRE:

A letter was provided dated February 19, 2014 with attached conditions of approval.

SAN BERNARDINO COUNTY DEPT OF PUBLIC HEALTH:

A letter was provided dated February 12, 2014 indicating that plans for food establishments shall be reviewed and approved by DEHS.

MOHAVE DESERT AIR QUALITY MANAGEMENT DISTRICT:

A letter was provided dated February 06, 2014 indicating that MDAQMD has no comments on the project.

SAN BERNARDINO COUNTY FLOOD CONTROL

An e-mail was received on February 06, 2014 stating that the project does not impact any Flood Control Facility.

UNITED STATES POSTAL SERVICE

An e-mail was received on February 06, 2014 requesting that the applicant contact USPS for mailbox placement.

HI DESERT WATER DISTRICT

A letter was sent to the applicant dated October 03, 2013 indicating willingness to provide water service.

COPIES OF ALL LETTERS ARE INCLUDED IN THE PACKET.

RECOMMENDATIONS:

ENVIRONMENTAL ASSESSMENT, EA 04-13

That the Planning Commission finds the project exempt from further environmental review in that the review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR), State Clearinghouse #2004071127. The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1:

That the Planning Commission approves Conditional Use Permit, CUP 02-04 Amendment #1, based upon the findings and the Conditions of Approval.

TENTATIVE PARCEL MAP, TPM 19525

That the Planning Commission approves Tentative Parcel Map, TPM 19525 based upon the findings and the Conditions of Approval.

Appeal Information:

Actions by the Planning Commission, including any finding that a negative declaration be adopted, may be appealed to the Town Council within 10 calendar days. Appeal Application filing and processing information may be obtained from the Planning Division of the Community Development Department. Per Section 83.030145 of the Development Code, minor modifications may be approved by the Planning Division if it is determined that the changes would not affect the findings prescribed in Section 83.030140 of the Development Code, Required Findings, and that the subject of the proposed changes were not items of public controversy during the review and approval of the original permit, including modifications to phasing schedules for the project.

I. GENERAL INFORMATION

PROJECT DESCRIPTION. The applicant is requesting approval to subdivide approximately 26 acres of commercially zoned property into three parcels of 0.84 acre, 0.75 acre and 23.88 acres and to construct a 2,230 square foot panda express and a 2,423 square foot taco bell. A total of 51 onsite parking spaces are proposed with drive aisles. All new utilities will be constructed below grade, and sewage disposal is proposed by connecting the buildings to an adjacent future public sewer system when available. The proposed buildings will be connected to the existing Wal-Mart sewage treatment facility until public sewers are available. Surrounding land uses include a mix of commercial and residential. Access to the site is internal from the existing Super Wal-Mart parking lot

LOCATION: The project is located on the southeast corner of 29 Palms Hwy and Avalon Ave and is further identified SPN: 601-201-37

PROJECT SYNOPSIS:

SITE COVERAGE

PROPERTY	26.26 acres
PROJECT AREA	1.59 acres
BUILDING AREA	Approximate 2,230 square foot fast food restaurant Approximate 2,423 square foot fast food restaurant
PHASED CONSTRUCTION:	No
FLOOD ZONE	Map 8120 zone X, areas determined to be outside the 0.2% annual chance floodplain.
ALQUIST PRIOLO ZONE	Yes
OFF-SITE IMPROVEMENTS REQ.	No, the improvements were completed with the construction of the Super Wal-Mart and Home Depot projects.
ASSESSMENT DISTRICTS REQ.	Yes, annexation into currently existing infrastructure maintenance districts

RIGHT-OF-WAY DEDICATION REQ.	No
UTILITY UNDERGROUNDING:	All new service lines shall be underground in conformance to Ordinance No. 169, or as amended by the Town Council.
AIRPORT INFLUENCE AREA:	Located outside the Airport Influence area.
TRAILS & BIKE LANE MASTER PLAN	Bike Lane along Avalon Ave.
PUBLIC FACILITY MASTER PLAN	No facilities on or adjacent to the project.
PARKS AND RECREATION MASTER PLAN	No public facilities are identified for this site.
MASTER PLAN OF DRAINAGE:	No facilities on or adjacent to the project.
EROSION AND SEDIMENT CONTROL PLAN REQUIRED	Yes
STREET LIGHTS:	No
SPECIFIC PLAN/ PLANNED DEVELOPMENT AREA:	Yes, Yucca Valley Retail Specific Plan, S-01-04
FUTURE PLANNING COMMISSION ACTION REQUIRED	None
FUTURE TOWN COUNCIL ACTION REQUIRED	None for the Conditional Use Permit Yes, for the Final Parcel Map and Assessment District annexation

II. PROJECT ANALYSIS

ADJACENT LAND USES: The site is bounded by 29 Palms Hwy on the north and Avalon Ave to the west. Across SR 62 to the north is a residential neighborhood and limited commercial properties. To the west of the site is an urgent care facility. To the east is the Home Depot and future Marshalls and Petco. Super Wal-Mart and Industrially zoned property are located to the south of the project site.

Surrounding General Plan Land Use designations are Commercial and Industrial to the south of the project site. Properties are designated Medium High Density Residential 8.1-14 units to the acre and Commercial to the north. Properties to the east and west are designated Commercial.

Surrounding Zoning designations are General Commercial (C-G) to the east, west and General Commercial and Industrial to the south. The properties to the north are zoned Residential Single Family, 5 units per acre (RS-5) and General Commercial. Commercial development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. General retail and service oriented commercial uses are anticipated in these areas, and the proposed use identified for the project is consistent with the desired development pattern within the Town.

SITE CHARACTERISTICS, GRADING, SETBACKS: The site was rough graded with the construction of the Super Wal-Mart project.

Based upon review of the submitted Preliminary Grading Plan, staff finds the proposed site grading consistent with generally accepted engineered grading practices and achieves compliance with required standards, as well as achieving site grading compatibility with surrounding properties to the degree possible, based upon existing grades, access and required standards.

Setback Area:	Required	Proposed
Panda Express		
SR 62, Side:	10'	32'
West, Front:	15'	168'
South, Side:	10'	58'+/-
East, Rear:	10'	17'
Taco Bell		
Avalon, Front	15'	27'
West, Side	10'	65'
South, Side	10'	19'
East, Rear	10'	120'

The Development Code provides for maximum 60% of the lot to be covered with building area. As proposed, the site is developed at approximately 7.5% lot coverage.

PHASING: There is no phasing proposed for the development of the project.

ROADWAY IMPROVEMENTS: The proposed project is bounded by Twentynine Palms Highway on the north and Avalon Ave to the west. No off-site improvements are

required, as the improvements were constructed as part of the Super Wal-Mart and Home Depot projects.

ASSESSMENT DISTRICTS: The approval of the project includes the requirement to annex into the existing maintenance assessment district(s) for the Super Wal-Mart for the purpose of maintaining such public improvements as pavement, drainage facilities, curb and gutter, sidewalk, landscaping, lighting, and other public improvements and public safety assessment district.

CIRCULATION & PARKING: On site circulation as proposed includes two points of ingress/egress, and on-site circulation meeting Town and Fire Department standards. Internal circulation provides access to required parking areas.

The project contains the necessary on-site improvements as well as overall parking design and layout. The project is conditioned to record reciprocal access and parking agreements as necessary to ensure long term shared parking when the adjacent parcels have been developed.

The project contains two fast food restaurants and as such, parking is established at 1 space per 50 square feet of seating area, resulting in a minimum standard of 15 parking spaces being required for each restaurant, for a total of 30 required spaces. Twenty-two spaces are provided for the Panda Express and twenty-nine spaces are provided for Taco Bell, for a total of 51 parking spaces, including 4 ADA designated parking spaces.

FLOOD CONTROL/DRAINAGE: The project is proposing to direct all on-site retention and drainage into the retention basin constructed for the Super Wal-Mart. This is consistent with the original project approval.

UTILITIES: Utilities are roughed in on the project site and were installed with the construction of the Super Wal-Mart building.

Each utility provider charges connection and service fees which are designed to include the need for additional facilities as growth occurs. The project applicant will be required to go through each utility company permitting processes.

Electrical services are provided by Southern California Edison. Natural gas services are provided to by The Gas Company. The Hi-Desert Water District (HDWD) serves water within the Town of Yucca Valley. Solid waste services are provided by Burrtec Inc. The Town of Yucca Valley requires mandatory solid waste services and the project will be served by Burrtec.

LANDSCAPING: A conceptual landscape plan was provided with the application submittal. A total of thirteen (13) Joshua Trees and 25, 24" box trees are being

incorporated into the project landscaping, in addition to small trees, shrubs and ancillary landscape improvements. Overall, the project landscaping plan exceeds the quality of common commercial landscaping designs and concepts presented.

A final plan is required to be reviewed and approved by both the Town and Hi-Desert Water District.

ENVIRONMENTAL CONSIDERATIONS: The review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR), State Clearinghouse #2004071127. The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

GENERAL PLAN CONSIDERATION: The project is designated Commercial (C). This designation is intended to support and encourage the development of retail and service uses, including small commercial centers and personal service businesses. This designation anticipates and encourages a wide range of retail sales, business uses and personal services oriented to the automobile customer. The proposed project is consistent with the designations in which it occurs.

The General Plan supports this project through the following policies:

COMMERCIAL

POLICY LU 1-15

Maintain Yucca Valley's position as the economic hub of the Morongo Basin. Support a broad range of commercial retail, service, office, business park, research and development, light industrial, and industrial uses to provide employment opportunities and contribute to the Town's economic sustainability.

POLICY LU 1-20

Focus commercial development along SR-62 to take advantage of infrastructure improvements.

CONCLUSION: Based upon the facts on the record, the project is consistent with the General Plan, the Development Code, the Yucca Valley Retail Specific Plan and the Town's master plans. Commercial based development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. The project, as designed, meets all requirements of the Development Code and the Yucca Valley Retail Specific Plan and no variances or deviations from adopted standards are required for approval.

CONDITIONAL USE PERMIT FINDINGS:

- 1. That the location, size, design, density and intensity of the proposed development is consistent with the General Plan, the purpose of the land use district in which the site is located, and the development policies and standards of the Town;**

The site is bounded by 29 Palms Hwy on the north, Avalon Ave to the west, and commercial projects to the south and east. Across SR 62 to the north is a single family residential neighborhood and limited commercial properties. Surrounding General Plan designations are Commercial (C) and Industrial to the south, Commercial to the west and east and Commercial and Medium High Density Residential 8.1-14 to the north. Zoning designations are General Commercial (C-G) and Industrial to the south, and General Commercial to the east and west. To the north of the project site is designated as General Commercial and Single Family Residential, 5 dwelling units per acre. Commercial based development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. General retail and service oriented commercial uses are anticipated in these areas, and the proposed uses identified in CUP 02-04 Amendment #1 are consistent with the desired development pattern within the Town. The project is developed below the maximum lot coverage of 60%, and all set-backs for the General Commercial District are met, as outlined in this Staff Report.

- 2. That the location, size, design and architectural design features of the proposed structures and improvements are compatible with the site's natural landform, surrounding sites, structures and streetscapes;**

The site is bounded by 29 Palms Hwy on the north, Avalon Ave to the west, and commercial projects to the south and east. Across SR 62 to the north is a single family residential neighborhood and limited commercial properties. Surrounding General Plan designations are Commercial (C) and Industrial to the south, Commercial to the west and east and Commercial and Medium High Density Residential 8.1-14 to the north. Zoning designations are General Commercial (C-G) and Industrial to the south, and General Commercial to the east and west. To the north of the project site is designated as General Commercial and Single Family Residential, 5 dwelling units per acre.

Commercial based development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. General retail and service oriented commercial uses are anticipated in these areas, and

the proposed uses identified in CUP 02-04 Amendment #1 are consistent with the desired development pattern within the Town.

3. **That the proposed development produces compatible transitions in the scale, bulk, coverage, density and character of the development between adjacent land uses;**

The site is bounded by 29 Palms Hwy on the north, Avalon Ave to the west, and commercial projects to the south and east. Across SR 62 to the north is a single family residential neighborhood and limited commercial properties. Surrounding General Plan designations are Commercial (C) and Industrial to the south, Commercial to the west and east and Commercial and Medium High Density Residential 8.1-14 to the north. Zoning designations are General Commercial (C-G) and Industrial to the south, and General Commercial to the east and west. To the north of the project site is designated as General Commercial and Single Family Residential, 5 dwelling units per acre.

Commercial based development was anticipated and planned for on this project site with adoption of the General Plan, and the development meets and satisfies the goals, policies and implementation strategies of the General Plan. General retail and service oriented commercial uses are anticipated in these areas, and the proposed uses identified in CUP 02-04 Amendment #1 are consistent with the desired development pattern within the Town.

The project is developed below the maximum lot coverage of 60%, and all set-backs for the General Commercial District are met, as outlined in this Staff Report. The site is adjacent to 29 Palms Hwy on the north and is surrounded by existing commercial development on the south and west, with residential development across 29 Palms Hwy to the north.

4. **That the building site and architectural design is accomplished in an energy efficient manner;**

The site is being developed consistent with adopted set back and building height standards, allowing opportunities to maximize energy efficiency and conservation measures in construction and building operations.

5. **That the materials, textures and details of the proposed construction, to the extent feasible, are compatible with the adjacent and neighboring structures;**

The construction materials, colors, textures, height and bulk are consistent with the Development Code standards and requirements and are consistent with

surrounding development patterns. Wood frame with stucco construction with desert compatible colors are proposed.

6. That the development proposal does not unnecessarily block views from other buildings or from public ways, or visually dominate its surroundings with respect to mass and scale to an extent unnecessary and inappropriate to the use;

The structures have a maximum building height at the tallest point of 22'. This building height is consistent with the commercial development pattern along SR 62 and as such, does not unnecessarily block views from public ways and is similar in mass and scale to the local built environment.

7. That the amount, location, and design of open space and landscaping conforms to the requirements of the Development Code, enhances the visual appeal and is compatible with the design and functions of the structure(s), site and surrounding area;

The proposed landscape plans indicate that thirteen native plants and twenty-five 24' box trees will be incorporated into the landscaping along with additional shrubs and ground cover. The project will be landscaped along 29 Palms Hwy and Avalon Ave with additional landscaping at the end of each parking aisle. There are also proposed landscaped areas to the north of the Taco Bell and buffering the drive-thru lanes of each building. This is consistent with Development Code requirements and compatible with surrounding development patterns.

8. That quality in architectural design is maintained in order to enhance the visual environment of the Town and to protect the economic value of existing structures;

The proposed structures are wood framed with stucco, with pop-outs, articulation, and colors consistent with the Specific Plan area as well as the SR 62 Commercial Corridor.

9. That there are existing public facilities, services, and utilities available at the appropriate levels and/or that new or expanded facilities, services and utilities shall be required to be installed at the appropriate time to serve the project as they are needed;

Utilities are roughed in on the project site and were installed with the construction of the Super Wal-Mart building.

Each utility provider charges connection and service fees which are designed to include the need for additional facilities as growth occurs. The project applicant will be required to pay these fees as applicable.

Electrical services are provided by Southern California Edison. Natural gas services are provided to by The Gas Company. The Hi-Desert Water District (HDWD, District) serves the Town of Yucca Valley. Solid waste services are provided by Burrtec Inc. The Town of Yucca Valley requires mandatory solid waste services and the project will be served by Burrtec.

- 10. That access to the site and circulation on and off-site is required to be safe and convenient for pedestrians, bicyclists, equestrians and motorists;**

On site circulation as proposed includes two points of ingress/egress, and on-site circulation meeting Town and Fire Department standards. Internal circulation provides access to required parking.

The project contains the necessary on-site improvements as well as overall parking design and layout. The project is conditioned to record reciprocal access and parking agreements as necessary to ensure long term shared parking when the adjacent parcels have been developed.

Parking is established at 1 space per 50 square feet of seating area, resulting in a minimum standard of 30 parking spaces being required. A total of 51 parking spaces are provided, including 4 ADA designated parking spaces.

- 11. That traffic generated from the proposed project has been sufficiently addressed and mitigated and will not adversely impact the capacity and physical character of surrounding streets;**

The review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR). The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

No negative impacts created by the project have been identified, including traffic impacts.

Additionally, the project is conditioned to pay Public Facility Development Impact fees in accordance with current Town Council policy, including Street and Traffic Impact Fees. The project is also conditioned to annex into the existing Super Wal-Mart maintenance districts that generate the necessary revenue to maintain the infrastructure constructed by the project.

12. **That traffic improvements and/or mitigation measures have been applied or required in a manner adequate to maintain a Level of Service C or better on arterial roads, where applicable, and are consistent with the Circulation Element of the Town General Plan;**

The review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR). The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

No negative impacts created by the project have been identified, including traffic impacts.

Additionally, the project is conditioned to pay Public Facility Development Impact fees in accordance with current Town Council policy, including Street and Traffic Impact Fees. The project is also conditioned to annex into the existing Super Wal-Mart form maintenance districts that generate the necessary revenue to maintain the infrastructure constructed by the project.

13. **That there will not be significant harmful effects upon environmental quality and natural resources including endangered, threatened, rare species, their habitat, including but not limited to plants, fish, insects, animals, birds or reptiles;**

The review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR). The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

No negative impacts created by the project have been identified, including biological resources.

14. ~~That there are no other relevant or anticipated negative impacts of the proposed use that cannot be mitigated and reduced to a level of non-significance in conformance with CEQA, the California Environmental Quality Act;~~

The review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR). The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

There is no substantial change to the project nor is there "new information of substantial importance" pursuant to CEQA guidelines section 15162, necessitating the requirement for a supplemental or subsequent EIR or the preparation of an addendum pursuant to Section 15164.

15. That the impacts which could result from the proposed development, and the proposed location, size, design and operating characteristics of the proposed development, and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety and welfare of the community or be materially injurious to properties or improvements in the vicinity or be contrary to the adopted General Plan; and

The review and approval of the Yucca Valley Retail Specific Plan included a program Environmental Impact Report (EIR). The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with program EIR and will not create any additional impacts not previously considered. No additional environmental review is required.
No negative impacts created by the project have been identified.

16. That the proposed development will comply with each of the applicable provisions of this code, and applicable Town policies; except approved variances.

The project, as designed, complies with the standards and requirements set forth in the Yucca Valley Development Code and the adopted General Plan policies, as identified and set forth in this Staff Report.

Attachments:

1. Standard Exhibits
2. Application materials
3. Site Plan & Elevations
4. Agency comments

**TOWN OF YUCCA VALLEY
CONDITIONS OF APPROVAL
ENVIRONMENTAL ASSESSMENT, EA 04-13
CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525
EIR STATE CLEARINGHOUSE #2004071127
PANDA EXPRESS-TACO BELL**

This approval is for Environmental Assessment, EA 04-13, Conditional Use Permit, CUP 02-04 Amendment #1, Tentative Parcel Map, TPM 19525, a request to subdivide 26 acres into three parcels and construct a 2,230 square foot Panda Express and a 2,423 square foot Taco Bell. The project is located on the southeast corner of 29 Palms Hwy and Avalon Ave and is further identified as APN: 601-201-37

GENERAL CONDITIONS

- G1. The applicant shall agree to defend, indemnify and hold harmless the Town of Yucca Valley, its agents, officers and employees, at his sole expense, against any action, claim or proceedings brought against the Town or its agents, officers or employees, to attack, set aside, void, or annul this approval or because of the issuance of such approval, or in the alternative, to relinquish such approval, in compliance with the Town of Yucca Valley Development Code. The applicant shall reimburse the Town, its agents, officers, or employees for any court costs, and attorney's fees which the Town, its agents, officers or employees may be required by a court to pay as a result of such action. The Town may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition. The Town shall promptly notify the applicant of any claim, action or proceedings arising from the Town's approval of this project, and the Town shall cooperate in the defense.
- G2. This Conditional Use Permit shall become null and void if construction has not commenced within three (3) years of the Town of Yucca Valley date of approval. Extensions of time may be granted by the Planning Commission, in conformance with the Town of Yucca Valley Development Code. The applicant is responsible for the initiation of an extension request.

**CUP 02-04, Amendment #1 Approval Date: March 11, 2014
CUP 02-04 Amendment #1 Expiration Date: March 11, 2017**

**TPM 19525 Approval Date: March 11, 2014
TPM 19525 Expiration Date: March 11, 2016**

- G3. The applicant shall ascertain and comply with requirements of all State, County, Town and local agencies as are applicable to the project. These include, but are not limited to, County of San Bernardino Environmental Health Services, County

of San Bernardino Transportation/Flood Control, County of San Bernardino Fire Department, Yucca Valley Building and Safety, Caltrans, High Desert Water District, Airport Land Use Commission, California Regional Water Quality Control Board, Colorado River Region, the Federal Emergency Management Agency, MDAQMD-Mojave Desert Air Quality Management District, Community Development, Engineering, and all other Town Departments.

- G4. All conditions are continuing conditions. Failure of the applicant to comply with any or all of said conditions at any time may result in the revocation of any construction permits for the project.
- G5. No on-site or off-site work shall commence without obtaining the appropriate permits for the work required by the Town and the appropriate utilities. The approved permits shall be readily available on the job site for inspection by Town personnel.
- G6. The applicant shall pay all fees charged by the Town as required for application processing, plan checking, construction and/or inspections. The fee amounts shall be those which are applicable and in effect at the time work is undertaken and accomplished. Fees for entitlement prior to construction permits are based on estimated costs for similar projects. Additional fees may be incurred, depending upon the specific project. If additional fees for services are incurred, they must be paid prior to any further processing, consideration, or approval(s).
- G7. All improvements shall be inspected by the Town as appropriate. Any work completed without proper inspection may be subject to removal and replacement under proper inspection.
- G8. All refuse shall be removed from the premises in conformance with Yucca Valley Town Code 33.083.
- G9. During construction, the Applicant shall be responsible to sweep public paved roads adjacent to the project as necessary and as requested by the Town to eliminate any site related dirt and debris within the roadways. During business activities, the applicant shall keep the public right-of-way adjacent to the property in a clean and sanitary condition.
- G10. No staging of construction equipment or parking of worker's vehicles shall be allowed within the public right-of-way of streets or other public improvements that have been accepted into the Town's maintained system
- G11. All existing street and property monuments within or abutting this project site shall be preserved consistent with AB 1414. If during construction of onsite or offsite improvements monuments are damaged or destroyed, the applicant shall retain a qualified licensed land surveyor or civil engineer to reset those

monuments per Town Standards and file the necessary information with the County Recorder's office as required by law (AB 1414).

- G12. Each phase of the project shall function independently of all other phases. All improvements shall be completed for each phase to ensure that each phase functions separate from the remainder of the project, and shall include, but not be limited to, street improvements, drainage and retention/detention facilities, water delivery systems, fire suppressions systems, post construction erosion and sediment control systems, all utilities necessary to serve the project, and those improvements deemed necessary by the Town. All phasing plans shall be illustrated on rough and precise grading plans, erosion and sediment control plans, all plan required for obtaining native plant plan approval, and on any other plan as deemed necessary by the Town.
- G13 At least one sign per fronting street shall be posted on the site and must contain the following information: the grading permit number, the project name, map number (if appropriate), the authorized dust controller phone number(s), the Town phone number and the Mojave Desert Air Quality Management District (MDAQMD) phone number. The signs must be obtained and installed by the developer using the sample format to be provided. The signs must be present at the pre-construction meeting or the grading permit will not be issued. The developer must keep the contact name and phone number active and current at all times. Failure of the contact system may be considered grounds for revocation of the permit.
- G14. At the time of permit issuance the applicant shall be responsible for the payment of fees associated with electronic file storage of documents
- G15. The Applicant shall reimburse the Town for the Town's costs incurred in monitoring the developer's compliance with the Conditions of Approval including, but not limited to, inspections and review of developer's operations and activities for compliance with all applicable dust and noise operations. This condition of approval is supplemental and in addition to normal building permit and public improvement permits that may be required pursuant to the Yucca Valley Municipal Code.
- G16. Prior to the issuance of a Certificate of Occupancy for any habitable structure in each phase of the project, all improvements shall be constructed, final inspection performed, punch-list items completed, and all installations approved by the appropriate agency.
- G17. After final plan check by the Town, original mylars (4 mil) shall be submitted to the Town for signature by the Town Engineer. All original mylars submitted for Town Engineer's signature must contain the design engineer's wet signature and stamp and all other required signatures.

- G18. For any import or export of material, the Project proponent shall provide the following for review by the Town Engineer: the route of travel, number of trucks, daily schedule, and length of time required. No hauling of material shall begin without the Town Engineer's approval.
- G19. Prior to any work being performed within the public right-of-way, the Project proponent shall provide the name, address, telephone, facsimile number, and e-mail address of the Contractor to perform the work. A description of the location, purpose, method of construction, and surface and subsurface area of the proposed work shall be supplied. A plat showing the proposed location and dimensions of the excavation and the facilities to be installed, maintained, or repaired in connection with the excavation, shall be provided and such other details as may be required by the Town Engineer.
- G20. The site shall be developed in accordance with the approved plans on file with the Town of Yucca Valley, in accordance with the Conditions of Approval approved for the project, and in accordance with the General Plan and Development Code. Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Town.
- G21. Prior to issuances of building permits, all site plans, grading plans, landscape and irrigation plans, drainage/flood control plans, public improvement plans, erosion and sediment control plans, shall be coordinated for consistency with this approval.
- G22. The Town may allow phased construction of the project provided that the improvements necessary to adequately serve or mitigate the impacts of each phase of development are completed prior to the issuance of a Certificate of Occupancy for that phase.
- G23. The applicant or the applicant's successor-in-interest shall be responsible for maintaining any undeveloped portion of the site in a manner that provides for the control of weeds, erosion and dust.
- G24. If archaeological, paleontological or historical resources are uncovered during excavation or construction activities at the project site, work in the affected area will cease immediately and a qualified person with appropriate expertise shall be consulted by the applicant regarding mitigation measures to preserve or record the find. Recommendations by the consultant shall be implemented as deemed necessary and feasible by the Town before work commences in the affected area. If human remains are discovered, work in the affected area shall cease immediately and the County Coroner shall be notified. If it is determined that the remains might be those of a Native American, the California Native American Heritage Commission shall be notified and appropriate measures provided by State law shall be implemented.

- G25. All street dedications shall be irrevocably offered to the public and shall continue in force until the Town accepts or abandons such offers. All dedications shall be free of all encumbrances as approved by the Town Engineer.
- G26. The street design and circulation pattern of this project shall be coordinated with adjoining developments.
- G27. The final conditions of approval issued by the approving authority shall be photographically or electronically placed on bond (blue/black line) paper and included in the Grading and Street Improvement plan sets on 24" x 36" bond (blue/ black line) paper and submitted with the plans for plan check. These conditions of approval shall become part of these plan sets and the approved plans shall be available in the field and during construction. Plan check fees shall not be charged for sheets containing the Conditions of Approval.
- G28. Prior to issuance of a certificate of occupancy, the applicant shall submit all improvement plans on compact disks in digital format acceptable to the Town Engineer.
- G29. Violations of any condition or restriction or prohibition set forth in these conditions, including all approved construction plans, public and private, for this project and subject to the Town's overall project approval and these conditions of approval, shall subject the owner, applicant, developer or contractor(s) to the remedies as noted in the Municipal Code. In addition, the Town Engineer or Building Official may suspend all construction related activities for violation of any condition, restriction or prohibition set forth in these conditions until such time as it has been determined that all operations and activities are in conformance with these conditions.

PLANNING CONDITIONS

- P1. The development of the property shall be in conformance with FEMA and the Town's Floodplain Management Ordinance requirements. Adequate provision shall be made to intercept and conduct the existing tributary drainage flows around or through the site in a manner that will not adversely affect adjacent or downstream properties at the time the site is developed. Protection shall be provided by constructing adequate drainage facilities, including, but not limited to modifying existing facilities or by securing a drainage easement.
- P2. In accordance with Ordinance 169, utility undergrounding shall be required for all new service and distribution lines that provide direct service to the property being developed; existing service and distribution lines that are located within the boundaries being developed; existing service and distribution lines between the street frontage property line and the centerline of the adjacent streets of the property being developed; existing Service and Distribution lines located on

adjacent properties along or within 10 feet of the lot lines of the property being developed; or existing service and distribution lines being relocated as a result of a project.

- P3. All exterior lighting shall comply with the Ordinance 90, Outdoor Lighting and shall be illustrated on all construction plans.
- P4. All mitigation measures identified in the Super Wal-Mart Environmental Impact Report and included in the Mitigation Monitoring Program are included as conditions of approval by this reference.
- P5. A final plan identifying all protected plants as well as a Native Plant Relocation Plan with any area proposed to be disturbed in accordance with the Town's Native Plant Protection Ordinance shall be submitted for approval prior to issuance of any construction permits, including grading and utility installations, for the project. The applicant shall make every effort to relocate the native plants back onsite. The adoption of native plants shall be consistent with the Native Plant Ordinance in effect at the time of grading permits. The final native plant plan shall be reviewed and approved by the Planning Commission prior to the issuance of any construction permits for the project site.
- P6. Prior to the issuance of any permits the applicant/owner shall provide three (3) copies of a landscape and irrigation plan showing the size, type and location of all plant and irrigation systems. Said irrigation system shall incorporate a permanent automatic irrigation system, and all landscaping and irrigation systems shall be maintained in good condition at all times. All ground within proposed landscape planter areas shall be provided with approved ground cover. This shall include but not be limited to drought-tolerant plant materials or colored desert rock. The Landscape Plan shall be approved by Hi-Desert Water District. The Landscape and Irrigation review requires a separate application and a current Town fee of \$685. The final Landscape and Irrigation Plan shall be reviewed and approved by the Planning Commission prior to the issuance of any permits.
- P7. Reciprocal parking and access agreements shall be recorded on all lots within the Parcel Map.

ENGINEERING CONDITIONS

- E1. Prior to the issuance of a Grading Permit, a precise grading plan prepared by a recognized professional Civil Engineer shall be submitted, and the corresponding fees shall be paid to the Town prior to any grading activity. The precise grading plan shall be reviewed and approved by the Town Engineer prior to issuance of grading permits. The applicant/owner is responsible for all fees incurred by the Town. Prior to Certificate of Occupancy, the Engineer-of-Record shall survey and

certify that the site grading was completed in substantial conformance with the approved Grading Plans.

- E2. All manufactured slopes over the height of 3 feet shall be irrigated and landscaped immediately following grading. Prior to issuance of a grading permit for any portion of the site, the applicant/owner shall submit, for review and approval, an irrigation and landscaping plan or other appropriate treatment for all slope areas.
- E3. The Engineer-of-Record or other civil engineer shall survey and provide pad certification for the site prior to issuance of building permits.
- E4. Prior to the issuance of Permits, the Applicant shall comply with the recommendations of a site-specific Geotechnical and Soils Report which shall be reviewed and subject to Town approval. The report shall include recommendations for any onsite and offsite grading, foundations, compaction, structures, drainage, and existence of fault zones. It shall include recommendations for retention basins, slope stability and erosion control. The soils engineering report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, when necessary and opinions and recommendation covering the adequacy of sites for development. The report shall identify if the site contains any areas susceptible to landslide risk, liquefaction potential and/or subsidence potential on the project site. The report shall identify and include the location of major geologic features, topography and drainage, distribution and general nature of rock and soils, a reasonable evaluation and prediction of the performance of any proposed cut or fill in relation to geological conditions, and the capability of soils and substrata to support structures.
- E5. All property corners, lots, easements, street centerlines, and curve radii shall be monumented and horizontally tied to identified control points. A copy of the monumentation survey and centerline tie notes shall be provided to the Town Engineer prior to certificate of occupancy.
- E6. All recommended approved measures identified in the Soils Report shall be incorporated into the project design.
- E7. A pre-filtration system shall be installed for all drain lines connected to any underground storage system to collect sediment and hydrocarbon material prior to discharge into the underground system.
- E8. Any grading or drainage onto private off-site or adjacent property shall require a written permission to grade and/or a permission to drain letter from the affected property owner.
- E9. In conjunction with precise grading certification, all retention/detention basins shall be certified by a civil engineer that they have been constructed in substantial conformance with the approved plans, and shall be certified that they

have the required capacity and will operate in accordance with the approved drainage reports for the project.

- E10. In conjunction with precise grading certification, all drainage systems, both public and private, shall be certified by a civil engineer that they have been constructed in substantial conformance with the approved plans, and shall be certified that they have the required capacity and will operate in accordance with the approved drainage reports for the project.
- E11. No on-site or off-site work shall commence without obtaining the appropriate permits for the work involved from the Town. The approved permits shall be readily available on the job-site for inspection by the Town personnel.
- E12. All grading activities shall minimize dust through compliance with MDAQMD Rules 402 and 403.
- E13. Prior to issuance of a grading permit, a Fugitive Dust and Erosion and Sediment Control Plan shall be submitted and approved by the Town Engineer. The Fugitive Dust and Erosion and Sediment Control Plan shall illustrate all proposed phasing for construction of the project.
- E14. A Notice of Intent to comply with Statewide General Construction Stormwater Permit (Water Quality Order 99-08-DWQ as modified December 2, 2002 or as otherwise updated by the Board) is required for the proposed development via the California Regional Water Quality Control Board (phone no. 760-346-7491). A copy of the executed letter issuing a Waste Discharge Identification number shall be provided to the Town prior to issuance of a grading permit. The Applicant shall comply with NPDES requirements as applicable. The Applicant shall install devices on his property to keep erodible material, rocks, and gravel on the site. To eliminate any site related dirt and debris within the roadways, the Applicant shall be responsible to sweep public paved roads adjacent to the project as necessary and as requested by the Town Staff.
- E15. Prior to any work being performed in the public right-of-way, fees shall be paid and an encroachment permit shall be obtained from the Town. The Applicant shall apply for an encroachment permit from the Town for utility trenching, utility connection, or any other encroachment onto public right-of-way. The Applicant shall be responsible for the associated costs and arrangements with each public utility.
- E16. The Applicant shall restore any pavement cuts required for installation or extension of utilities for his project within the public right-of-way. In all cases where cuts are allowed, the Applicant is required to patch the cuts to Town standards and the approval of the Town Engineer. The patching shall include a grinding of the pavement to a width 4 feet beyond the edge of the trench on each side, or as determined by the Town Engineer, and replacement with a full-depth asphalt concrete recommended by the Soils Engineer.

- E17. The Applicant shall accept and properly dispose of all off-site drainage flowing onto or through the site.
- E18. The Applicant shall construct the replacement of any identified damaged curb and gutter, sidewalk, drive approach, asphalt concrete pavement, meter boxes, and other infrastructure that may be required by the Town Engineer or another Agency.
- E19. The Applicant shall install all water and sewer systems required to serve the project. All water and sewer systems shall be completed to the requirements of the Hi Desert Water District.
- E20. The Applicant shall observe the construction of this project to make certain that no damage or potential for damage occurs to adjacent roadway, existing improvements, adjacent property and other infrastructure. The applicant shall be responsible for the repair of any damage occurring to offsite infrastructure and/or property damage as determined by the Town Engineer. The applicant shall repair any such damage prior to certificate of occupancy. If the damage is such that it is not repairable within a reasonable amount of time as determined by the Town Engineer, the applicant may petition the Town Engineer for additional conditions that may allow him the time, amount of surety and other requirements to repair the damage.
- E21. The Applicant shall be responsible for all improvements constructed within the public right-of-way as required by the conditions of approval. The improvements shall be constructed to the standards and requirements as determined and approved by the Town Engineer. Any improvements not considered to be to the required standards shall be replaced by the Applicant. The Applicant shall be required to maintain and repair those improvements prior to and after acceptance by the Town Council for the length of time required by the applicable conditions, standards and ordinances.
- E22. All improvement plans shall be designed by a Registered Civil Engineer.
- E23. Any area which remains undeveloped for a period of more than 30 days shall be stabilized using either chemical stabilizers or a desert wildflower mix hydroseed on the affected portion of the site.
- E24. The Applicant shall be responsible for inspection, modification, and proper maintenance of the erosion control devices as necessary. If the Applicant fails or refuses to properly maintain the erosion control devices, the Town official may cause emergency maintenance work to be done in order to protect potentially impacted property. The cost shall be deducted from the erosion control security posted for the project and shall include all costs related to the emergency maintenance including initial mobilization and performance of the work in addition to applicable administrative costs.
- E25. If construction of erosion control systems outside of the project boundaries is necessary, permission to construct such systems from the owner of such off-site property is required. Plans for the off-site system shall be included with the on-

site plans submitted to the Town Engineer. The plans for the off-site erosion control system shall include permission to grade and maintain the erosion control system from all affected property owners and letters of clearance and/or permits from all appropriate governmental entities.

- E26. The Applicant shall submit a post construction erosion and sediment control plan which identifies and illustrates all necessary improvements to prevent the movement and or loss of any soil and sediment materials from the project site, including all individual lots for construction of habitable structures, all slope banks, and all areas of the site capable of resulting in the deposit of soils and sediments with the street or storm drain system. The post construction erosion and sediment improvements shall be certified by a civil engineer that they were constructed in substantial conformance with the approved plans and specifications.
- E27. It is understood that the Conditional Use Permit plans correctly shows all existing easements, traveled ways and drainage courses, and that their omission may require the Conditional Use Permit plans to be resubmitted for further consideration.
- E28. Private drainage easements for cross-lot drainage shall be dedicated and delineated on the final map.
- E29. A construction area traffic control plan, including temporary and final permanent striping, shall be designed by a registered Civil Engineer or Traffic Engineer for review and approval by the Town Engineer for any street construction, closure, detour or other disruption to traffic circulation.
- E30. All street closures must be approved by Town Council action.
- E31. The following shall information regarding the presence of the Marine Corps Air Ground Combat Center (MGAGCC) shall be recorded on the title of each property contained within the boundaries of the Conditional Use Permit.
- "The Marine Corps Air Ground Combat Center is located in the Morongo Basin. To prepare Marines for future conflicts, the MGAGCC carries out realistic training with military munitions, both day and night. As a result, Military aircraft fly over the area, and military vehicles drive on and off the base every day. This property is located directly under two aircraft flying routes and is located approximately 13 miles from the installation boundary. Consequently, you should expect to hear military training, see low-flying military aircraft, and encounter other experiences associated with the important mission of the MCAGCC".
- E32. After final plan check by the Town, original mylars (4 mil) shall be submitted to the Town for signature by the Town Engineer. All original mylars submitted for the Town Engineer's signature must contain the design engineer's wet signature and stamp and all other required signatures.
- E33. The project street and lot grading shall be designed in a manner that perpetuates the existing natural drainage patters with respect to tributary drainage area and

outlet points. Unless otherwise approved by the Town Engineer, lot lines shall be located at the top of slopes.

- E34. Improvement plans shall be based upon a centerline profile, extending beyond the project boundaries a minimum distance of 300 feet at a grade and alignment approved by the Town Engineer.
- E35. Prior to final parcel map approval, the applicant shall enter into a subdivision improvement agreement with the Town of Yucca Valley. In addition to the subdivision improvement agreement, the applicant shall submit bonds including but not limited to, 100% faithful performance bond, 50% labor and materials bond, 25% guaranty/ warranty bond, monument bond and grading bond.
- E36. The engineer-of-record shall prepare bond estimates for public improvements required for the project. The estimates shall be prepared on estimating forms provided by the Town. The bond estimate shall be reviewed and approved by the Town Engineer.
- E37. Drainage easements, when required, shall be shown on the final map and noted as follows: "Drainage Easement – no buildings, obstructions or encroachments by land fills are allowed".
- E38. It is understood that the tentative map correctly shows all existing easements, traveled ways and drainage courses, and that their omission may require the tentative map to be resubmitted for further consideration.
- E39. If improvements associated with this project are not initiated within the approval time period of the subdivision improvement agreement, the Town Engineer may require that plans be modified to reflect current codes and standards in effect at the time of request for an extension of time for the improvement agreement or issuance of a permit.
- E40. Private drainage easements for cross-lot drainage shall be dedicated and delineated on the final map.
- E41. With submittal of grading plans, street improvement plans, storm drain and retention/detention basin plans, and erosion and sediment control plans, the Applicant shall cause to be formed, or shall be annexed into an existing, maintenance district(s) for landscape, lighting, streets, drainage facilities or other infrastructure as required by the Town. The Applicant shall initiate the maintenance and benefit assessment district(s) formation, or annexation, by submitting a landowner petition and consent form (provided by the Town) and deposit necessary fees concurrent with the application for street and grading plan review and approval; and said maintenance and benefit assessment district(s) shall be established concurrent with the approval of the final map in the case of the subdivision of land, or prior to issuance of any certificate of occupancy where there is no subdivision of land.
- E42. The proposed restaurants shall connect to the existing sewer and water stub-outs provided by the Wal-Mart development.

- E43. Storm waters shall be routed to the existing storm water retention basin.
- E44. Areas for construction stockpiling, equipment storage and maintenance shall be submitted to the Town Engineer for review and approval with each phase of the project.

BUILDING AND SAFETY CONDITIONS

- B1. Prior to the delivery of combustible materials, the following items shall be accepted as complete:
 - a. The water system is functional from the source of water past the lots on which permits are being requested (i.e. All services are installed, valves are functional and accessible, etc.); and
 - b. Fire hydrants are accepted by the County Fire Department and the Hi Desert Water District. The fire hydrants associated with each phase shall be functioning prior to issuance of building permits.
- B2. The applicant shall submit three sets of plans to the Building and Safety Dept. for plan check and approval.
- B3. At the time of building plan check submittal, the applicant shall provide approval from the San Bernardino County Fire Dept.
- B4. Prior to final inspection, all required improvements shall be constructed and finalized and accepted by the appropriate agency prior to the issuance of a Certificate of Occupancy.

Fire Conditions

- F1. Prior to any construction occurring on any parcel, the applicant shall contact the Fire Department for verification of current fire protection requirements. All new construction shall comply with the current Uniform Fire Code requirements and all applicable statutes, codes, ordinances and standards of the Fire Department.
- F2. Not less than 2 complete sets of Building Plans shall be submitted to the Fire Department for review and approval.
- F3. The applicant shall provide the Fire Department with a letter from the serving water company, certifying that the required water improvements have been made or that the existing fire hydrants and water system will meet distance and fire flow requirements. Fire flow water supply shall be in place prior to placing combustible materials on the job-site.

Conditional Use Permit, CUP 02-04 Amendment #1,
Tentative Parcel Map, TPM 19525 Panda Express-Taco Bell
March 11, 2014 Planning Commission Meeting

- F4. Please see attached letter from San Bernardino County Fire Dept. for additional conditions.

Mojave Desert Air Quality Management District Condition

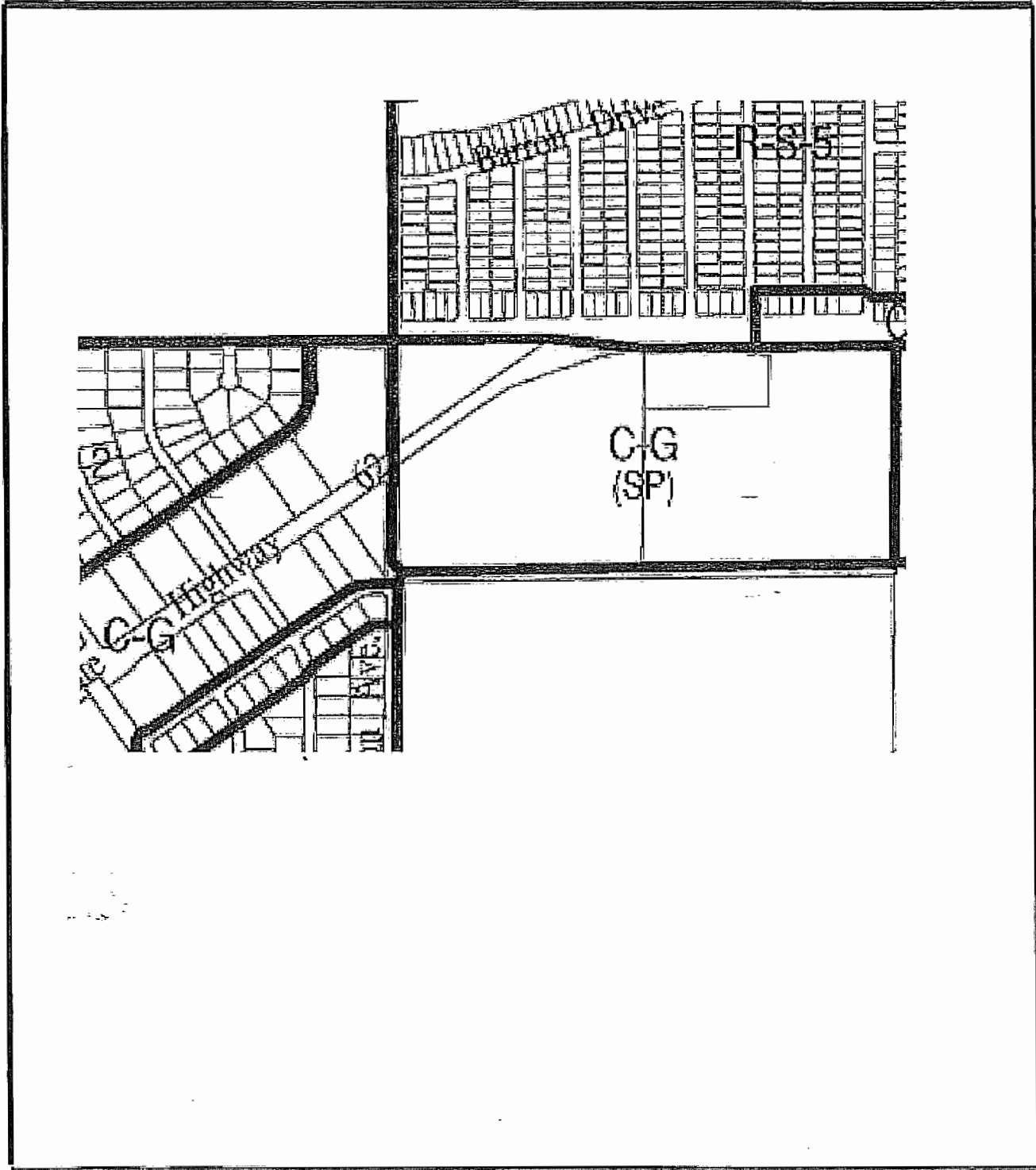
- M1. A "Notification of Demolition/Renovation" application must be completed and submitted to the District pursuant to Health and Safety Code Section 19827.5 for the demolition of any load bearing wall or foundation.

I HEREBY CERTIFY THAT THE APPROVED CONDITIONS OF APPROVAL WILL BE SATISFIED PRIOR TO OR AT THE TIMEFRAMES SPECIFIED AS SHOWN ABOVE. I UNDERSTAND THAT FAILURE TO SATISFY ANY ONE OF THESE CONDITIONS WILL PROHIBIT THE ISSUANCE OF ANY PERMIT OR ANY FINAL MAP APPROVAL.

Applicant's Signature _____ Date _____

TOWN OF YUCCA VALLEY

PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL

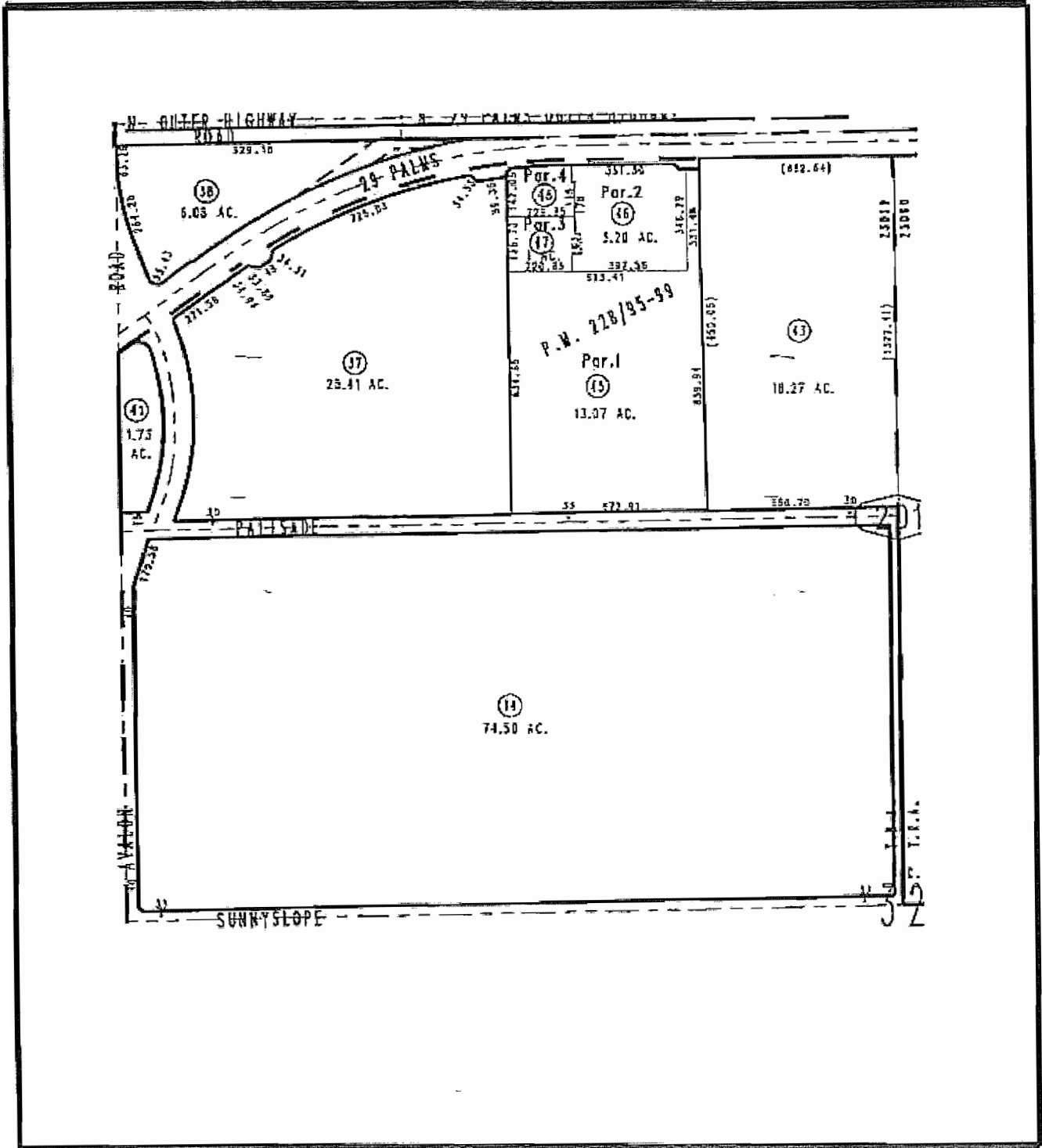


ZONING MAP

P. 31
P. 97

TOWN OF YUCCA VALLEY

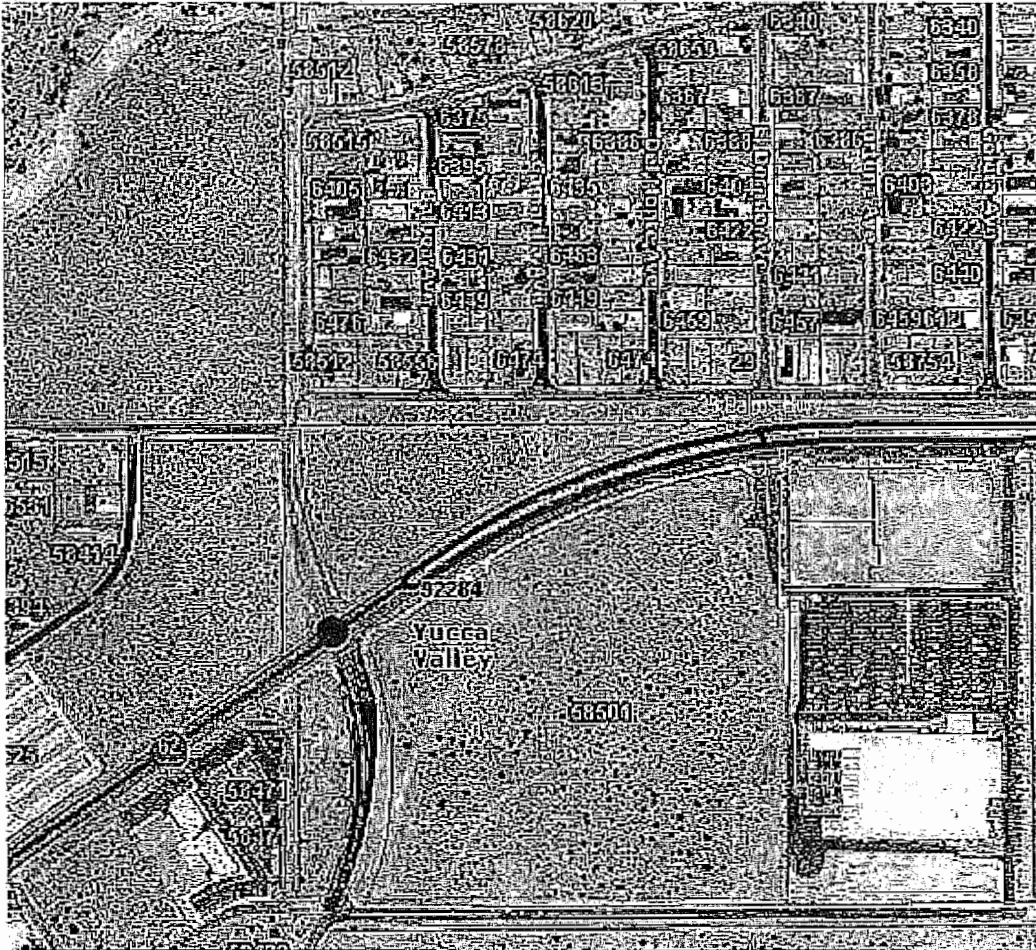
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



ASSESSORS PARCEL MAP

TOWN OF YUCCA VALLEY

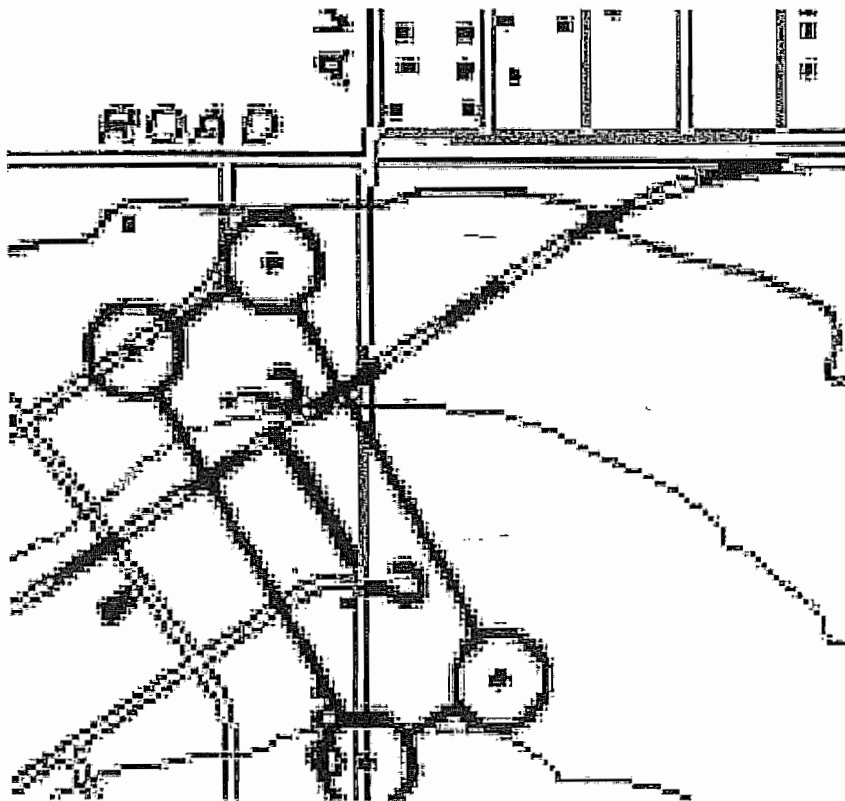
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



AERIAL PHOTO

TOWN OF YUCCA VALLEY

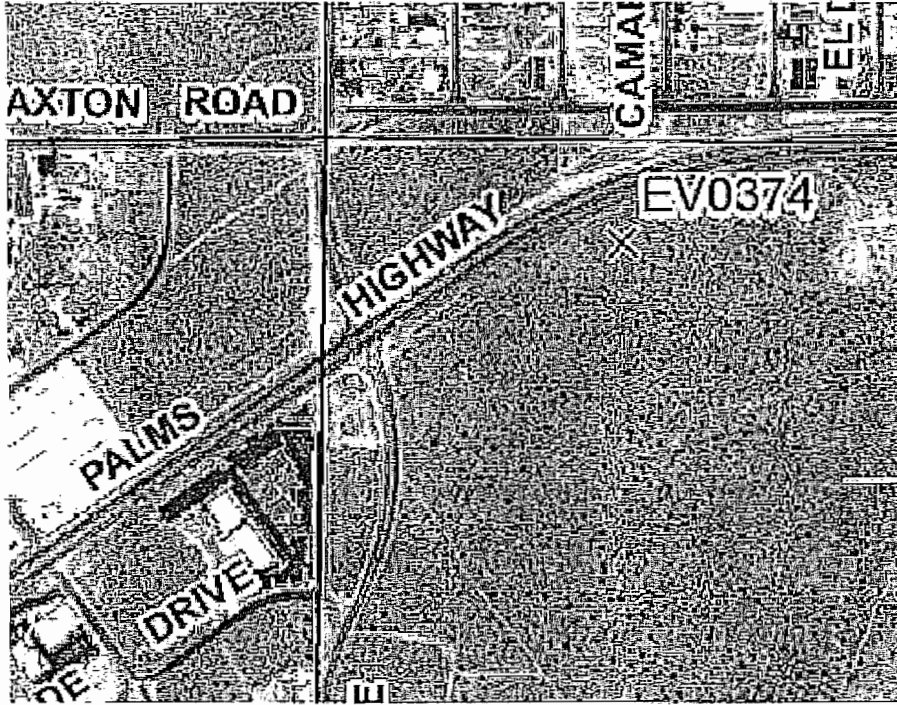
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
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ALQUIST PRIOLO MAP

TOWN OF YUCCA VALLEY

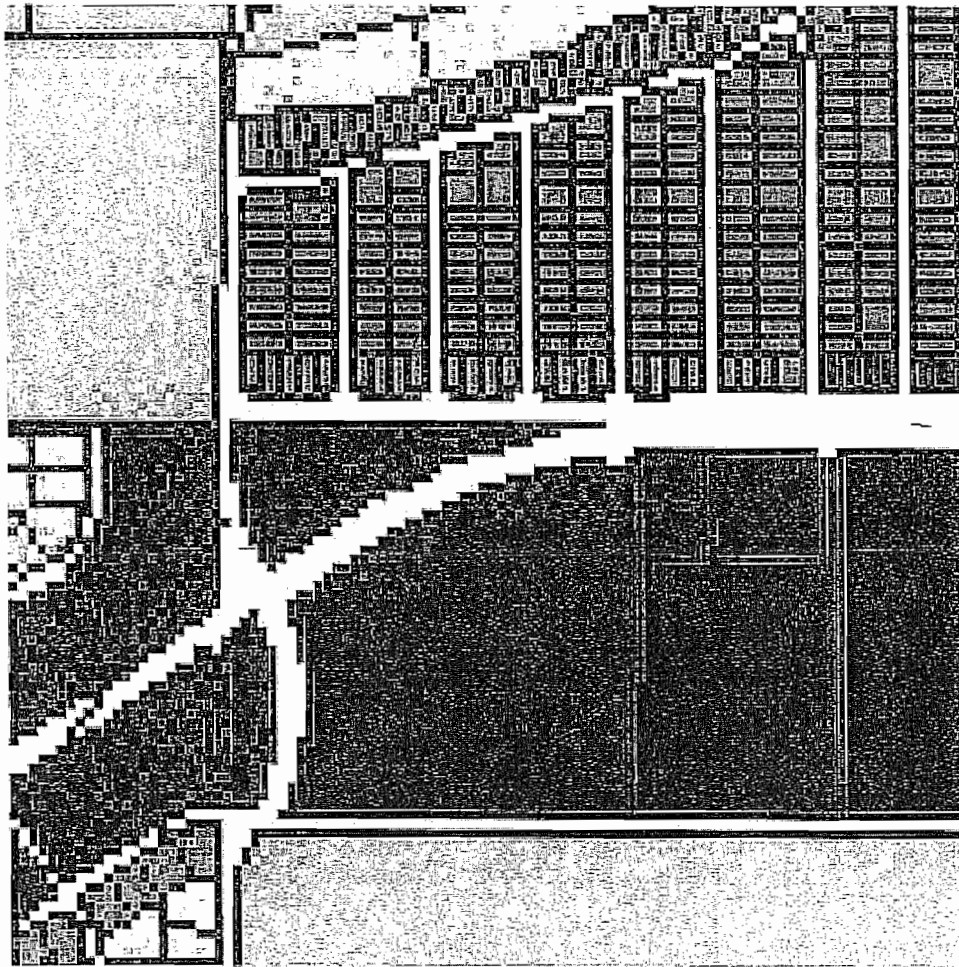
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



FEMA FLOOD MAP

TOWN OF YUCCA VALLEY

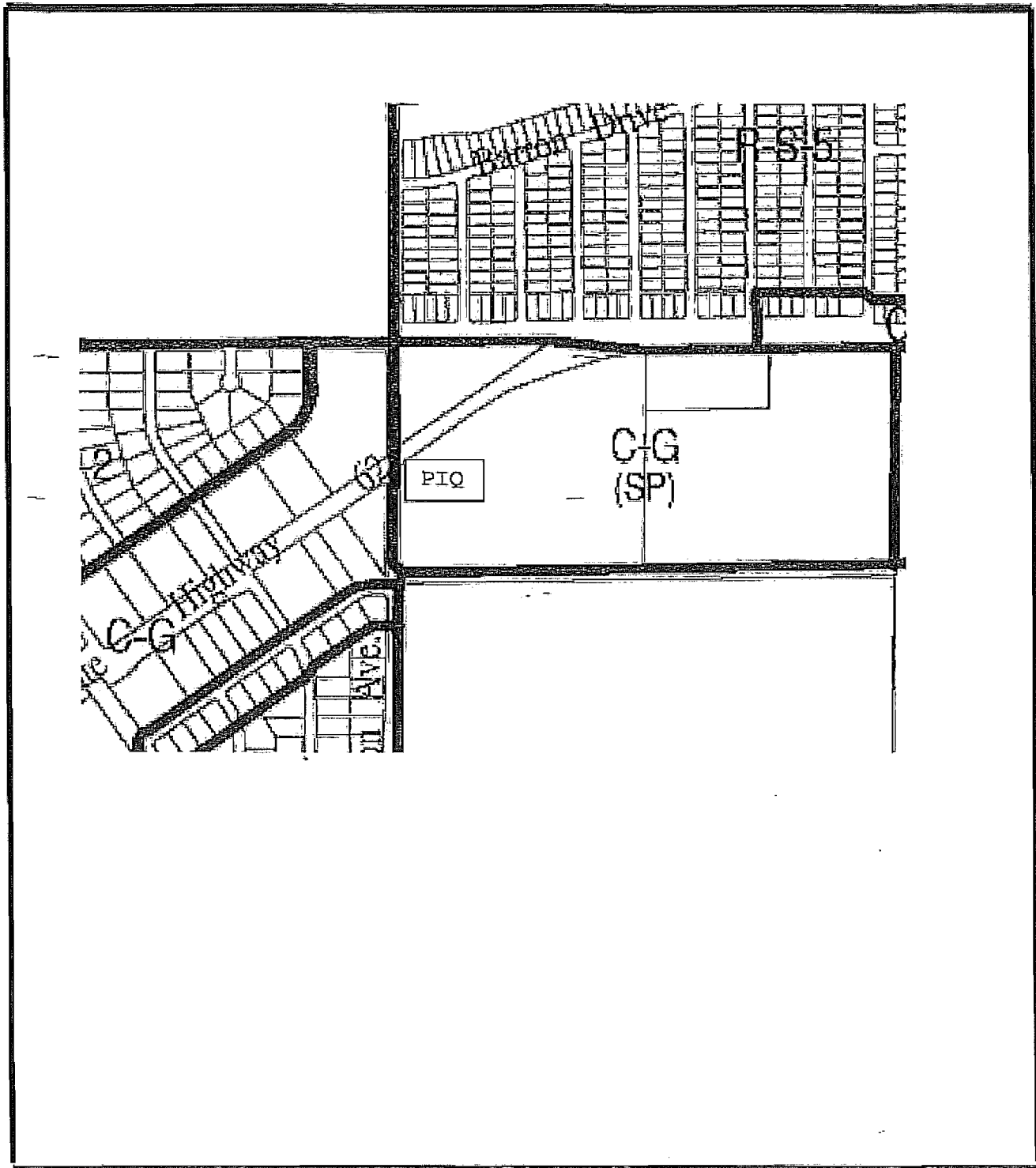
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



GENERAL PLAN LAND USE MAP

TOWN OF YUCCA VALLEY

PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL

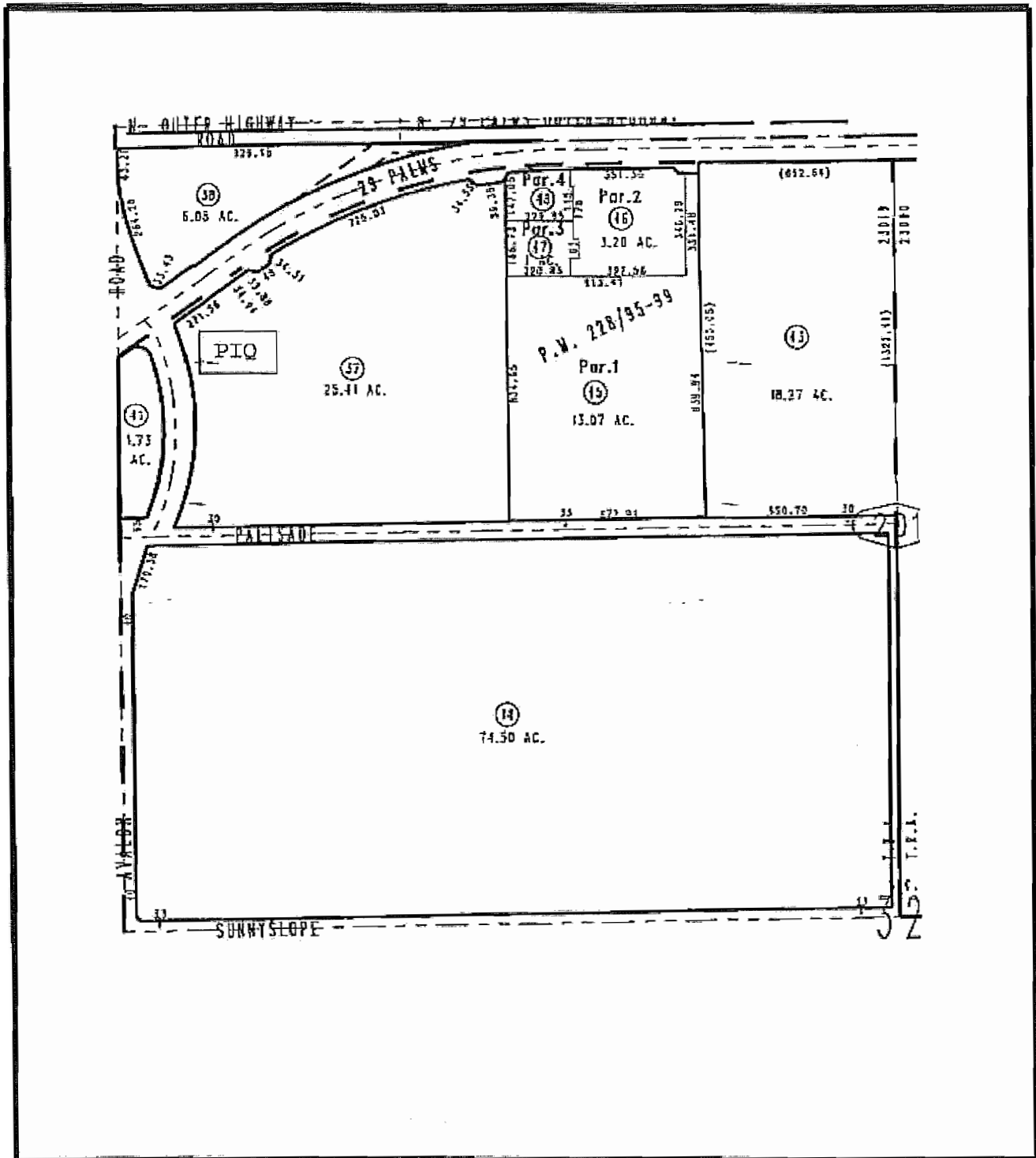


ZONING MAP

P. 37
P. 103

TOWN OF YUCCA VALLEY

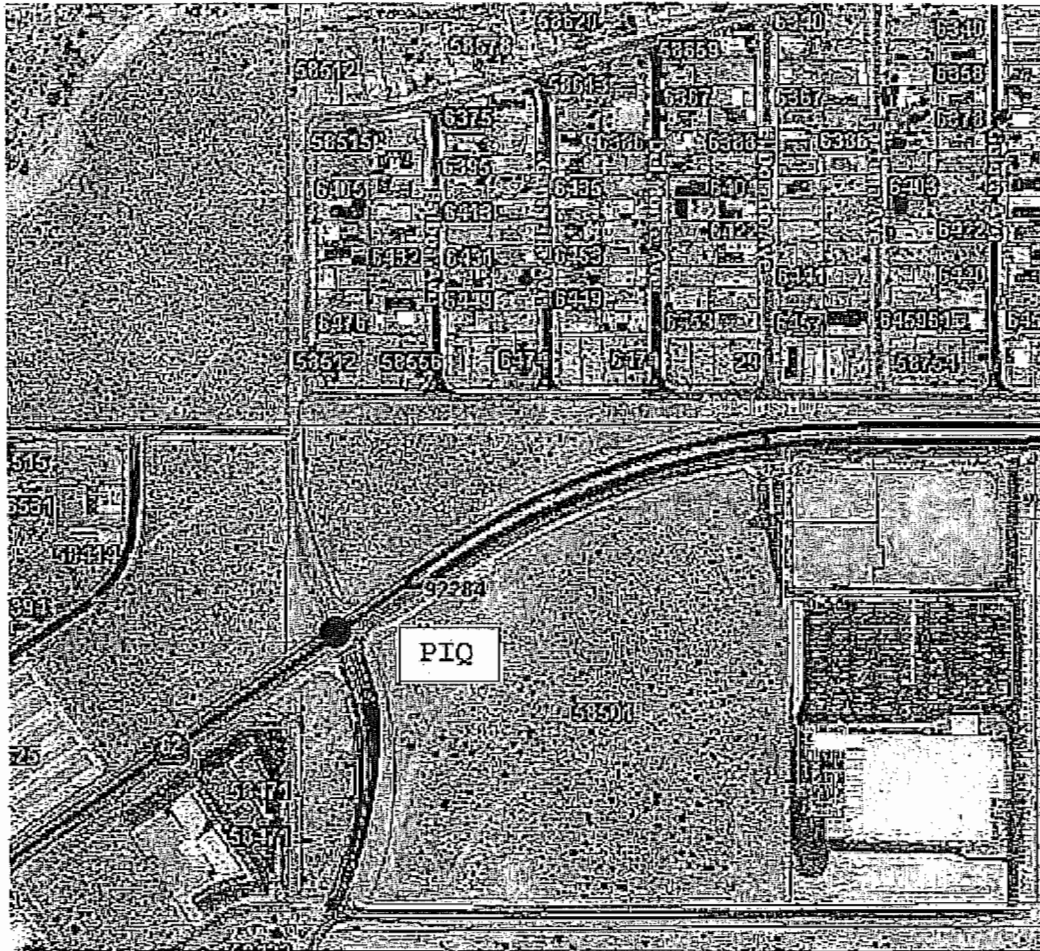
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



ASSESSORS PARCEL MAP

TOWN OF YUCCA VALLEY

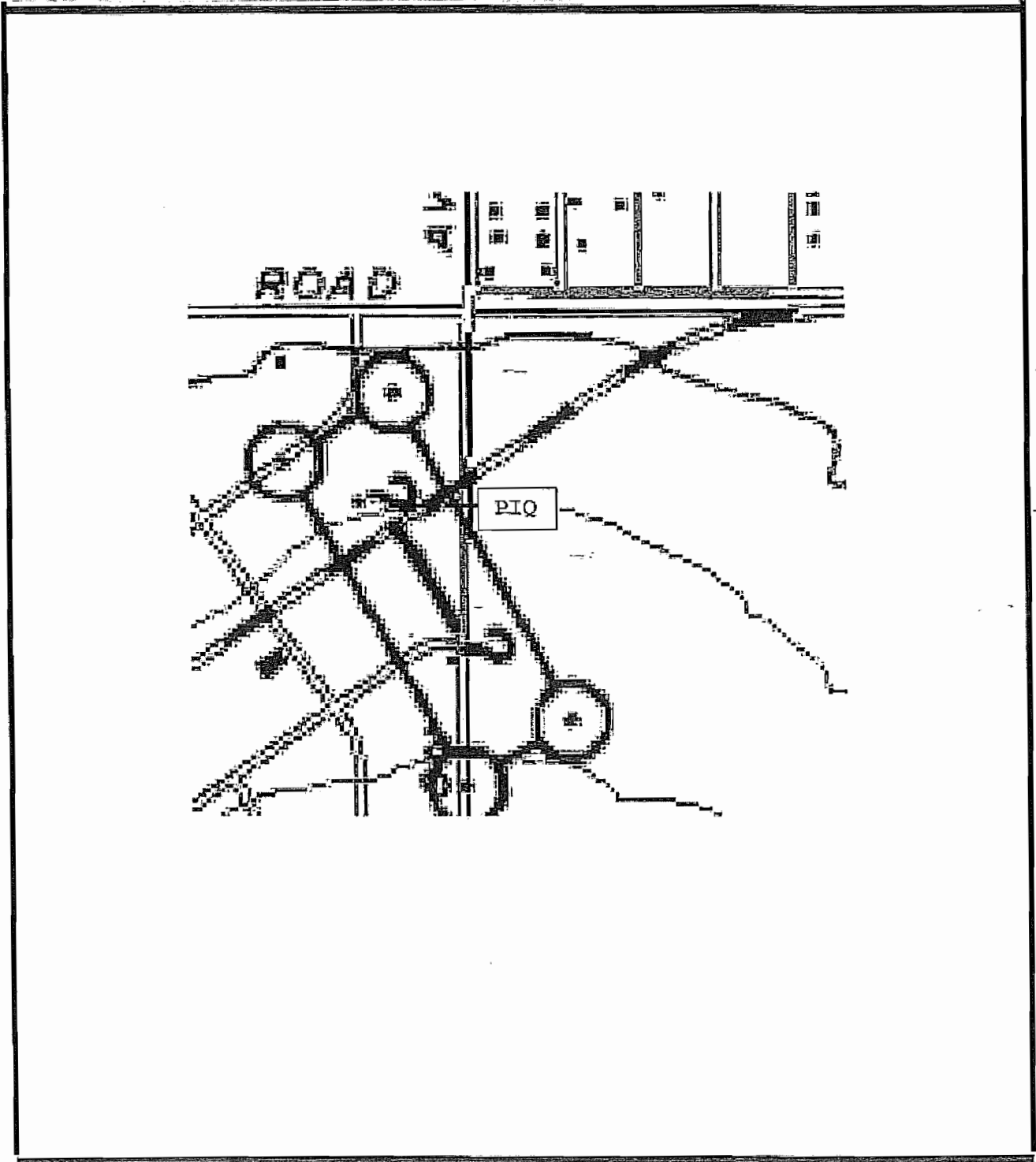
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AERIAL PHOTO

TOWN OF YUCCA VALLEY

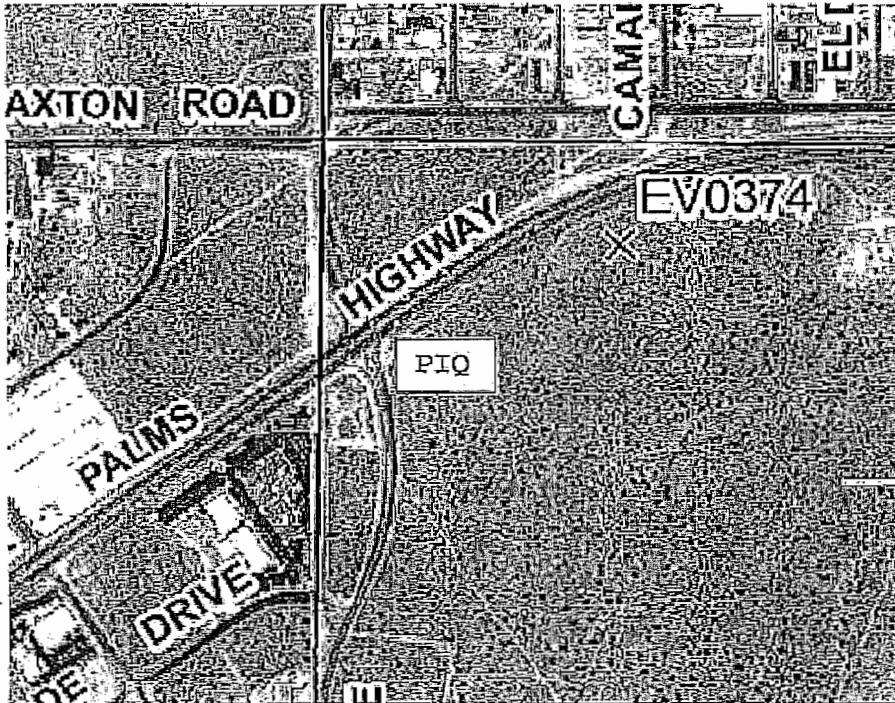
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



ALQUIST PRIOLO MAP

TOWN OF YUCCA VALLEY

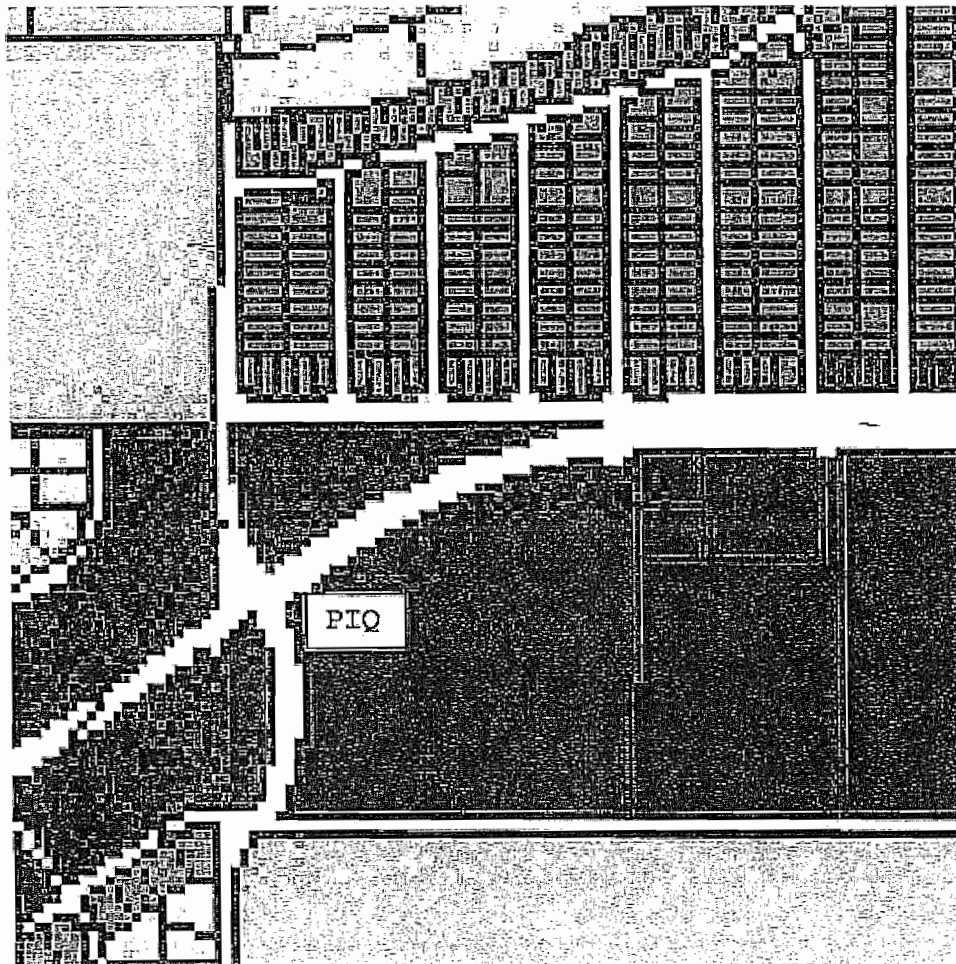
PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



FEMA FLOOD MAP

TOWN OF YUCCA VALLEY

PROJECT: CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1
TENTATIVE PARCEL MAP, TPM 19525 PANDA EXPRESS-TACO BELL



GENERAL PLAN LAND USE MAP

DEPARTMENT OF TRANSPORTATION

DISTRICT 8

PLANNING (MS 725)

464 WEST FOURTH STREET, 6th FLOOR

SAN BERNARDINO, CA 92401-1400

PHONE (909) 383-4557

FAX (909) 383-5936

TTY 711

www.dot.ca.gov/dist8

*Flex your power!
Be energy efficient!!*

February 25, 2014

Mr. Diane Olsen
Town of Yucca Valley
58928 Business Center Dr.
Yucca Valley, CA 92284

Proposed Panda Express & Taco Bell, CUP 02-04

Dear Ms. Olsen:

The California Department of Transportation reviewed the Conditional Use Permit Application submitted by the Town of Yucca Valley. We don't have any comments on the proposed permit for the Panda Express-Taco Bell facilities.

Thank you for providing us the opportunity to offer our comments to this project. If you have any questions regarding this letter, please contact me at (909)-383-4557 or Bob Ortiz at (909) 806-3954 for assistance.

Sincerely,

A handwritten signature in black ink that reads "Daniel Kopulsky".

DANIEL KOPULSKY

Office Chief

Community Planning/Local Development Review

MAR 04 2014

MAR 04 2014

**SAN BERNARDINO COUNTY
FIRE DEPARTMENT**

**OFFICE OF THE FIRE MARSHAL
COMMUNITY SAFETY DIVISION
15900 Smoke Tree Street, 1st Floor, STE 131
Hesperia, CA, 92345
(760) 995-8190 - Fax (760) 995-8205**



**COUNTY OF SAN BERNARDINO
PUBLIC AND SUPPORT
SERVICES GROUP**

**MARK A. HARTWIG
Fire Chief**

DATE: February 19, 2014

EXPIRATION: February 2015

**CFT DEVELOPMENTS, LLC
1683 WALNUT GROVE AVE
ROSEMEAD, CA 91770-3711**

**PERMIT NUMBER: F201400174
PROJECT NUMBER: CUP 02-04
LOCATION: SOUTHEAST CORNER OF 29 PALMS HWY AND AVALON AVE
PROJECT TYPE: CUP
OCCUPANCY TYPE:
APN: 0601-201-37-0000
PROPOSAL: PROPOSAL TO CONSTRUCT A 2,230 SQ FT PANDA EXPRESS AND A 2,423 SQ FT TACO BELL. A TOTAL OF 52 ONSITE PARKING SPACES ARE PROPOSED WITH DRIVE AISLES. SURROUNDING LAND USES INCLUDE A MIX OF COMMERCIAL AND RESIDENTIAL. ACCESS TO THE SITE IS PROPOSED FROM SR 52 AND AVALON AVE.
PLANNER: DIANE OLSON**

Dear Applicant:

With respect to the conditions of approval regarding the above referenced project, the San Bernardino County Fire Department requires the following fire protection measures to be provided in accordance with applicable local ordinances, codes, and/or recognized fire protection standards.

The *Fire Conditions Attachment* of this document sets forth the *FIRE CONDITIONS* and *STANDARDS* which are applied to this project.

FIRE CONDITIONS: ALL FIRE CONDITIONS FOR THIS PROJECT ARE ATTACHED

Page 1 of 4

Sincerely,

A handwritten signature in black ink, appearing to read "C. Markloff", with the date "2/19/14" written below it.

**Curtis Markloff, Fire Prevention Specialist
San Bernardino County Fire Department
South Desert Division Community Safety Division
Duty, Honor, Community**

FIRE CONDITIONS ATTACHMENT

DATE: 02-19-2014
PROJECT: CUP 02-04
PERMIT NUMBER: F201400174
LOCATION: SOUTHEAST CORNER OF 29
PALMS HWY AND AVA
PARCEL: 0601-201-37-0000



CONDITIONS

Cond: EXPNOTE

Construction permits, including Fire Condition Letters, shall automatically expire and become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Suspension or abandonment shall mean that no inspection by the Department has occurred with 180 days of any previous inspection. After a construction permit or Fire Condition Letter, becomes invalid and before such previously approved work recommences, a new permit shall be first obtained and the fee to recommence work shall be one-half the fee for the new permit for such work, provided no changes have been made or will be made in the original construction documents for such work, and provided further that such suspension or abandonment has not exceeded one year. A request to extend the Fire Condition Letter or Permit may be made in writing PRIOR TO the expiration date justifying the reason that the Fire Condition Letter should be extended.

Cond: F01

Jurisdiction. The above referenced project is under the jurisdiction of the San Bernardino County Fire Department herein ("Fire Department"). Prior to any construction occurring on any parcel, the applicant shall contact the Fire Department for verification of current fire protection requirements. All new construction shall comply with the current Uniform Fire Code requirements and all applicable statutes, codes, ordinances and standards of the Fire Department. [F01]

Cond: CON0027214

Additional Requirements. In addition to the Fire requirements stated herein, other on site and off site improvements may be required which cannot be determined from tentative plans at this time and would have to be reviewed after more complete improvement plans and profiles have been submitted to this office. [F01A]

Cond: F03

Inspection by Fire Department. Permission to occupy or use the building (Certification of Occupancy or Shell Release) will not be granted until the Fire Department inspects, approves and signs off on the Building and Safety job card for "fire final". [F03]

Cond: F05

Water System. Prior to any land disturbance, the water systems shall be designed to meet the required fire flow for this development and shall be approved by the Fire Department. The required fire flow shall be determined by using Appendix IIIA of the Uniform Fire Code. [F05]

Cond: F05B

Fire Flow Test. Your submittal did not include a flow test report to establish whether the public water supply is capable of meeting your project fire flow demand. You will be required to either produce a current flow test report from your water purveyor demonstrating that the fire flow demand

FIRE CONDITIONS ATTACHMENT

DATE: 02-19-2014
PROJECT: CUP 02-04
PERMIT NUMBER: F201400174
LOCATION: SOUTHEAST CORNER OF 29
PALMS HWY AND AVA
PARCEL: 0601-201-37-0000



is satisfied or you must install an approved fire sprinkler system. This requirement shall be completed prior to combination inspection by Building and Safety. [F05B]

Cond: CON0027213

Building Plans. No less than three (3) complete sets of Building Plans shall be submitted to the Fire Department for review and approval. [F42]

Cond: F44

Combustible Protection. Prior to combustibles, being placed on the project site an approved paved road with curb and gutter and fire hydrants with an acceptable fire flow shall be installed. The topcoat of asphalt does not have to be installed until final inspection and occupancy. [F44]

Cond: CON0027119

Access. The development shall have a minimum of 2 points of vehicular access. These are for fire/emergency equipment access and for evacuation routes. Standard 902.2.1

Single Story Road Access Width:

All buildings shall have access provided by approved roads, alleys and private drives with a minimum twenty six (26) foot unobstructed width and vertically to fourteen (14) feet six (6) inches in height. Other recognized standards may be more restrictive by requiring wider access provisions.

Multi-Story Road Access Width:

Buildings three (3) stories in height or more shall have a minimum access of thirty (30) feet unobstructed width and vertically to fourteen (14) feet six (6) inches in height. [F41]

Cond: F54

Water System Commercial. A water system approved and inspected by the Fire Department is required. The system shall be operational, prior to any combustibles being stored on the site. All fire hydrants shall be spaced no more than three hundred (300) feet apart (as measured along vehicular travel-ways) and no more than three hundred (300) feet from any portion of a structure. [F54]

Cond: F65

Hood And Duct Suppression. An automatic hood and duct fire extinguishing system is required. A Fire Department approved designer/installer shall submit three (3) sets of detailed plans (minimum 1/8" scale) with manufacturers' specification sheets to the Fire Department for review and approval. The required fees shall be paid at the time of plan submittal. [F65]

Cond: F80

FIRE CONDITIONS ATTACHMENT

DATE: 02-19-2014
PROJECT: CUP 02-04
PERMIT NUMBER: F201400174
LOCATION: SOUTHEAST CORNER OF 29
PALMS HWY AND AVA
PARCEL: 0601-201-37-0000



Hydrant Marking. Blue reflective pavement markers indicating fire hydrant locations shall be installed as specified by the Fire Department. In areas where snow removal occurs or non-paved roads exist, the blue reflective hydrant marker shall be posted on an approved post along the side of the road, no more than three (3) feet from the hydrant and at least six (6) feet high above the adjacent road. Standard 901.4.3. [F80]

Cond: F82

Commercial Addressing. Commercial and industrial developments of 100,000 sq. ft or less shall have the street address installed on the building with numbers that are a minimum six (6) inches in height and with a three quarter (3/4) inch stroke. The street address shall be visible from the street. During the hours of darkness, the numbers shall be electrically illuminated (internal or external). Where the building is two hundred (200) feet or more from the roadway, additional non-illuminated contrasting six (6) inch numbers shall be displayed at the property access entrances. Standard 901.4.4 [F82]

Cond: F85

Key Box. An approved Fire Department key box is required. The key box shall be provided with a tamper switch and shall be monitored by a Fire Department approved central monitoring service. In commercial, industrial and multi-family complexes, all swing gates shall have an approved fire department Knox Lock. Standard 902.4 [F85]

Cond: F88

Fire Extinguishers. Hand portable fire extinguishers are required. The location, type, and cabinet design shall be approved by the Fire Department. [F88]

Cond: F93

Fire Lanes. The applicant shall submit a fire lane plan to the Fire Department for review and approval. Fire lane curbs shall be painted red. The "No Parking, Fire Lane" signs shall be installed on public/private roads in accordance with the approved plan. Standard 901.4 [F93]

DEPARTMENT OF PUBLIC HEALTH



COUNTY OF SAN BERNARDINO

Division of Environmental Health Services: (800) 442-2283

- 385 North Arrowhead Avenue – San Bernardino, CA 92415-0160
- 8575 Haven Avenue, Suite 130 – Rancho Cucamonga, CA 91730-9105
- 15900 Smoke Tree, Suite 131 – Hesperia, CA 92345
- San Bernardino County Vector Control Program
2355 East 5th Street – San Bernardino, CA 92410-5201

TRUDY RAYMUNDO
Public Health Director

MAXWELL OHIKHUARE, M.D.
Health Officer

CORWIN PORTER, MPH, R.E.H.S.
Division Chief, Environmental Health Services

February 12, 2014

Diane Olsen
Town of Yucca Valley
Planning Department
58928 Business Center Drive
Yucca Valley, CA 92284

Dear Ms. Olsen,

Environmental Health Services would like to submit the following comments in regards to the CUP application, CUP 02-04 Amendment #1 Panda Express Taco Bell on APN 0601-201-37.

1. Plans for food establishments shall be reviewed and approved by DEHS.

For information, call DEHS/Plan Check at: 1-800-442-2283.

Please contact me if you have any questions.

Jessica Ballesteros, REHS
County of San Bernardino, Department of Public Health
Community Environmental Health Services
385 North Arrowhead Avenue, Second Floor
San Bernardino, CA 92415-0160
Phone (800) 442-2283
Fax (909) 387- 4323
jessica.ballesteros@dph.sbcounty.gov

GREGORY C. DEVEREAUX
Chief Executive Officer

Board of Supervisors
ROBERT A. LOVINGOOD, First District
JANICE RUTHERFORD, CHAIR, Second District
JOSE GONZALES, Fifth District
JAMES RAMOS
GARY C. DWIFF

Third District
Fourth District



Mojave Desert Air Quality Management District

14306 Park Avenue, Victorville, CA 92392-2310

760.245.1661 • fax 760.245.2699

Visit our web site: <http://www.mdaqmd.ca.gov>

Eldon Heaston, Executive Director

February 6, 2014

Ms. Diane Olsen, Planning Technician
Town of Yucca Valley
58928 Business Center Drive
Yucca Valley, CA 92284

Project: CUP 02-04, Amendment #1 (Panda Express – Taco Bell)

Dear Ms. Olsen:

The Mojave Desert Air Quality Management District (District) has received the Request for Comments for Conditional Use Permit 02-04, Amendment #1. This is a proposal to subdivide approximately 26 acres of commercially zoned property into three parcels and to construct a 2,230 square foot Panda Express and a 2,423 square foot Taco Bell. The project is located on the southeast corner of Twentynine Palms Highway and Avalon Avenue.

The MDAQMD has reviewed the project and, based on the information available to us at this time, we have no comments.

Thank you for the opportunity to review this planning document. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 6726, or Tracy Walters at extension 6122.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan J. De Salvio".

Alan J. De Salvio
Supervising Air Quality Engineer

AJD/tw

YV CUP 02-04 Panda Express-Taco Bell

Diane Olsen

From: Mendoza, Richard <rmendoza@dpw.sbcounty.gov>
Sent: Thursday, February 06, 2014 12:58 PM
To: Diane Olsen
Cc: Ali, Mohammad
Subject: RE: Town of Yucca Valley CUP application

Diane,

The Flood Control has no comments at this time. The drainage is being routed to an on-site basin and therefore does not impact any Flood Control Facility.

Thank you,



Richard Mendoza
Engineering Technician III
Department of Public Works
Flood Operations Support Division
(909) 387-8008

"Our job is to create a county in which those who reside and invest can prosper and achieve well-being."

From: Ali, Mohammad
Sent: Wednesday, February 05, 2014 5:33 PM
To: Mendoza, Richard
Subject: FW: Town of Yucca Valley CUP application

Please review, discuss and then respond to the Town. Thx

From: Diane Olsen [mailto:dolsen@YUCCA-VALLEY.ORG]
Sent: Wednesday, February 05, 2014 4:20 PM
Subject: Town of Yucca Valley CUP application

The Town of Yucca Valley is currently reviewing a Conditional Use Permit application and a Parcel Map application for the subdivision of approximately 26 acres into three lots and for the construction of two fast food restaurants. The property is located on the southeast corner of 29 Palms Hwy and Avalon Ave.

Attached for your review are the application materials and the site plan. Please take the time to review the attached documents and provide any comments that you may have. Please contact me at dolsen@yucca-valley.org or 760-369-6575 x317, if you have any questions or require any additional information.

Thank you,
Diane Olsen
Planning Technician
760-369-6575 x317

Diane Olsen

From: Rhoades, Matt - Rancho Mirage, CA <Matthew.W.Rhoades@usps.gov>
Sent: Thursday, February 06, 2014 3:49 PM
To: Diane Olsen
Subject: Conditional Use Permit - Panda Express/Taco Bell

Good afternoon. I just recieved the Committee Meeting and Request for Comments.

Prior to begining construction please contact local Post Office at 760-365-0725 to schedule appointment for mailbox placement if not already approved.

Thank you,

Matt Rhoades
Officer-In-Charge
Yucca Valley, CA 92284
760-365-0725



HI-DESERT WATER DISTRICT

October 3, 2013

Michelle Soliman
1255 Corporate Center Drive, Suite #8
Monterey Park, CA. 91754

Legal Description: 601-201-37

This letter indicates the District's preliminary willingness to provide water service to the above referenced parcel subject to the terms, conditions, limitations and restrictions set forth by the District at the time that water service is requested.

Water service availability is additionally subject to the following:

- Current Board and administrative policies relating to the issuance and installation of new water services.
- Hi-Desert Water District Rules and Regulations as may be amended or revised from time to time.

Please be advised, this letter is valid for one year, from the date of issuance.

Please also be advised that the California Regional Water Quality Control Board - Colorado River Basin Region passed Resolution No. R7-2011-0004, prohibiting the discharge of wastewater from new or existing individual disposal systems within the District. This Resolution was based on scientific peer-reviewed data indicating that septic tank discharge was the primary source of nitrates in groundwater, which may cause methemoglobinemia (more commonly known as blue baby syndrome) in infants six months or younger. The District is currently developing a wastewater treatment plant and sewer system to collect, transmit, and treat wastewater to not only help current and future customers of the District to comply with this prohibition, but to also preserve and protect the groundwater within the District from any further contamination. The development of the wastewater treatment plant and sewer system has involved a significant expenditure of District resources and funds. For that reason, water service pursuant to this will serve will be conditioned on your connection to the District's wastewater treatment plant and sewer system and paying the requisite fees for such connection. The wastewater treatment plant and sewer system is being constructed in phases to service various areas within the District.

If you have any questions or concerns, please feel free to contact me at (760)365-7412.

Sincerely,

Mark C. Ban
Assistant General Manager





Conditional Use Permit Application

Date Received	09/25/13
By	D. OLSEN
Fee	2985 ⁰⁰
Case #	CUP. 02-CA AMEND # 1
EA #	EA-0513

General Information

APPLICANT CFT Developments, LLC Phone 626-372-8122 Fax 626-403-8527
Mailing Address 1683 Walnut Grove Ave Email Charlie.Shen@pandarg.com
City Rosemead State CA Zip 91770-3711

REPRESENTATIVE Gary Wang & Associates Phone 626-288-6898 Fax 626-768-7101
Mailing Address 1255 Corporate Center Drive Suite 8 Email michelle@garywang.com
City Monterey Park State CA ZIP 91754

PROPERTY OWNER CFT Developments, LLC Phone 626-372-8122 Fax 626-403-8527
Mailing Address 1683 Walnut Grove Ave Email Charlie.Shen@pandarg.com
City Rosemead State CA Zip 91770-3711

Project Information

Project Address _____ Assessor Parcel Number(s) _____
Project Location Highway 62 & Avalon Avenue
Project Description: 2 Fast food restaurant ground up buildings and site development.

Please attach any additional information that is pertinent to the application.

Town of Yucca Valley
Community Development Department
Planning Division
58928 Business Center Dr
Yucca Valley, CA 92284
760 369-6575 Fax 760 228-0084
www.yucca-valley.org

Project Description

Complete the items below as they pertain to your project. Attach a copy of any plans submitted as part of the project application and any other supplemental information that will assist in the review of the proposed project pursuant to CEQA.

1. Commercial, Industrial, or Institutional Projects:

- A. Specific type of use proposed: Commercial
- B. Gross square footage by each type of use: 4,653 Gross SF of Commercial
- C. Gross square footage and number of floors of each building: 2,230 SF (Commercial - Panda Express) and 2,423 SF (Commercial - Taco Bell)
- D. Estimate of employment by shift: TBD
- E. Planned outdoor activities: Outdoor dining area

2. Percentage of project site covered by:

40 % Paving, 7 % Building, 40 % Landscaping, 13 % Parking

3. Maximum height of structures 22 ft. 1 in.

4. Amount and type of off street parking proposed: 52 standard parking (9'x19') stalls

5. How will drainage be accommodated? On-site drainage will not alter existing drainage pattern. swale will be provided to collect storm water runoff and will be draining towards catch basins. These catch basins are to be connected to existing storm drain pipe system.

6. Off-site construction (public or private) required to support this project:

Electrical, gas, water utilities

7. Preliminary grading plans estimate N/A cubic yards of cut and N/A cubic yards of fill

8. Description of project phasing if applicable: N/A

9. Permits or public agency approvals required for this project: _____

Planning, Health, Building, Fire, Hi-Desert Water District

10. Is this project part of a larger project previously reviewed by the Town? If yes, identify the review process and associated project title(s) _____

Yes, amendment to the approved Conditional Use Permit 02-04

11. During construction, will the project: (Explain any "yes" or "maybe" responses to questions below – attach extra pages if necessary.)

Yes Maybe No

- A. Emit dust, ash, smoke, fumes or odors?
- B. Alter existing drainage patterns?
- C. Create a substantial demand for energy or water?
- D. Discharge water of poor quality?
- E. Increase noise levels on site or for adjoining areas?
- F. Generate abnormally large amounts of solid waste or litter?
- G. Use, produce, store, or dispose of potentially hazardous materials such as toxic or radioactive substances, flammable or explosives?
- H. Require unusually high demands for such services as police, fire, sewer, schools, water, public recreation, etc.
- I. Displace any residential occupants?

Certification

I hereby certify that the information furnished above, and in the attached exhibits, is true and correct to the best of my knowledge and belief.

Signature: BY: *[Signature]* Date: 9/18/13
CFI DEVELOPMENTS, LLC
CHARLIE SHEN,
ITS: MANAGER

APPROVED AS TO FORM
[Signature]

Owner/Applicant Authorization

Applicant/Representative: I/We have reviewed this completed application and the attached material. The information included with this application is true and correct to the best of my/our knowledge. I/We further understand that the Town may not approve the application as submitted, and may set conditions of approval. Further, I/We understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. Additional fees may be required depending on additional administrative costs.

CPT DEVELOPMENTS, LLC

Signed: BY: [Signature]

Date: 11/18/13

Property Owner: I/We certify that I/We are presently the legal owner(s) of the above described property (If the undersigned is different from the legal property owner, a letter of authorization must accompany the form). Further, I/We acknowledge the filing of this application and certify that all of the above information is true and accurate. I/We understand that I/We are responsible for ensuring compliance with conditions of approval. I/We hereby authorize the Town of Yucca Valley and/or its designated agent(s) to enter onto the subject property to confirm the location of existing conditions and proposed improvements including compliance with applicable Town Code Requirements. Further, I/We understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. Additional fees may be required depending on additional administrative costs. I am hereby authorizing

CHARLIE SHEN

to act as my agent and is further authorized to sign any and all documents on my behalf.

CPT DEVELOPMENTS, LLC

Signed: BY: [Signature]

Dated: 11/18/13

APPROVED AS TO FORM

BY: [Signature]



SURROUNDING PROPERTY OWNERS LIST CERTIFICATION
(To be submitted with application)

I, SUZAN CAR, certify that on 9.14.13 the attached property owners list was prepared by Same pursuant to the requirements of the Town of Yucca Valley. Said list is a complete compilation of the owner(s), applicant(s) and representative of the subject property and all owners of surrounding properties within a radius of 300 feet from all exterior boundaries of the subject property and is based on the latest equalized assessment rolls of the San Bernardino County Assessor's Office dated Sept. 2013. I further certify that the information filed is true and correct to the best of my knowledge; I understand that incorrect and erroneous information may be grounds for rejection or denial of the development application.

Signed: Suzan Car

Print Name: Susan Car Date: 9-14-13

Developer Disclosure Statement

This portion of the application must be fully completed and signed by the applicant. If not fully completed and signed, the application will be deemed incomplete.

Address of subject property: _____

Cross street: Highway 62 & Avalon Ave

Date this Disclosure Statement is completed: 9/18/13

Name of Applicant: CFT Developments, LLC

The Applicant is a:

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name CFT Developments, LLC Phone 626-372-8428 Fax 626-372-8957

Mailing Address 1683 Walnut Grove Email charlie.shen@pandarg.com

City Rosemead State CA Zip 91770

State of Registration California

Managing member(s), General Partner(s) officer(s)

Name see attached Phone 626-299-9898 Fax 626-372-8957

Mailing Address 1683 Walnut Grove Ave Email maria.figueroa@pandarg.com

City Rosemead State CA Zip 91770

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

The Party in escrow is a (if property is in escrow):

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

State of Registration _____

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For any deeds of trust or other liens on the property (other than real property tax liens) please state the following:

A. Name of beneficiary of the deed of trust or lien _____

B. Date of the deed of trust or lien. _____

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date and location set forth below

CFT DEVELOPMENTS, LLC

By: [Signature]
Signature *As Manager*

APPROVED AS TO FORM

BY [Signature]

Print Name: CHARLIE STEW

Title: As Manager of CFT DEVELOPMENTS, LLC

Date of signing: 9/18/15

Location: Rosemead, CA



HAZARDOUS WASTE SITE STATEMENT

I have been informed by the Town of Yucca Valley of my responsibilities, pursuant to California Government Code Section 65962.5, to notify the Town as to whether the site for which a development application has been submitted is located within an area which has been designated as the location of a hazardous waste site by the Office of Planning and Research, State of California (OPR).

I am informed and believe that the proposed site, for which a development application has been submitted, is not within any area specified in said Section 65962.5 as a hazardous waste site.

I declare under penalty of perjury of the Laws of the State of California that the foregoing is true and correct.

Dated: _____

9/18/13

CPT Developments, LLC

By: CHARLIE STAN

Applicant/Representative printed name

As: Manager

Applicant/Representative signature

APPROVED AS TO FORM

BY



LSA ASSOCIATES, INC.
1500 IOWA AVENUE, SUITE 200
RIVERSIDE, CALIFORNIA 92507

951.781.9310 TEL
951.781.4277 FAX

OTHER OFFICES:
IRVINE
PT. RICHMOND
SAN LUIS OBISPO
PALM SPRINGS
FORT COLLINS
BERKELEY
ROCKLIN
SOUTH SAN FRANCISCO
CARLSBAD
FRESNO

August 26, 2013

Ms. Michelle Soliman, Assoc. AIA
Job Captain, Gary Wang & Associates, Inc.
1255 Corporate Center Drive, Suite 8
Monterey Park, CA 91754

Subject: Yucca Valley Wal-Mart Trip Generation Comparison (LSA Project No. GAW1301)

Dear Michelle:

LSA Associates, Inc. is pleased to present this trip generation letter for the Yucca Valley Retail Center. An analysis has been prepared to compare the trip generation of the Yucca Valley Retail Center as currently proposed with the trip generation included in the Final Environmental Impact Report (EIR), dated March 2008 and the trip generation of Yucca Valley Retail Specific Plan, dated August 2008.

The traffic study of the Final EIR, dated March 2008, analyzed the Retail Center assuming a 229,000 square foot Wal-Mart, a fueling station consisting of 6 pumps (or 12 fueling stations) and a 4,000 square foot fast food restaurant with drive thru. In the Yucca Valley Retail Specific Plan, the Retail Center includes a 184,146 square foot Wal-Mart, one 4,000 square foot fast food restaurant with drive thru, and a 3,500 square foot Retail Store. The Yucca Valley Retail Center as currently proposed includes an 184,146 square foot Wal-Mart, two fast food restaurants with drive thru totaling 4,757 square feet.

Table A shows the trip generation for the Specific Plan area as analyzed in the EIR, the approved Specific Plan as well as currently proposed. The trip generation for the project as included in the EIR was forecast to be 11,266 daily trips with 287 trips in the a.m. peak hour and 989 trips during the p.m. peak hour. Under the approved Specific Plan, the trip generation was anticipated to be 8,901 daily trips with 260 trips in the a.m. peak hour and 755 trips during the p.m. peak hour. As currently proposed, the project would generate 8,913 daily trips with 271 trips in the a.m. peak hour and 753 trips during the p.m. peak hour. As shown on Table A, the daily trip generation as well as the a.m. and p.m. peak hour trip generations included in the Final EIR are greater than the trip generation of the Retail Center as currently proposed and as described in the Yucca Valley Retail Specific Plan. When the trip generation of the Retail Center as currently proposed is compared to the trip generation of the Yucca Valley Retail Specific Plan, the difference is nominal as the trip generated by the current proposal is 12 trips more daily trips, 10 more a.m. peak hour trips, and 2 less p.m. peak hour trips.

Ultimately the results of the analysis show that the trip generation, as analyzed in the Final EIR, is a worst case scenario. There is also an insignificant difference between the trip generation of the retail center as currently proposed and the trip generation of Yucca Valley Retail Specific Plan. Consequently, implementation of the Retail Center as currently proposed would not change of the results the traffic analysis included in the Final EIR; and therefore, intersection performance along study intersections are likely to be better than those forecast in the EIR.

Table A - Yucca Valley Retail Center Trip Generation

Land Uses	Units	Daily Rate Trips	A.M. Peak Hour				P.M. Peak Hour								
			Rate	Total	In Split Trips	Out Split Trips	Rate	Total	In Split Trips	Out Split Trips					
Results from Final Environmental Impact Report, March 2008															
Parcel One: Retail Store	229,000 TSF	56.02	12,829	0.84	192	53%	122	47%	90	5.06	1,159	52%	603	48%	556
Internalized Trips	10.0%		1,283		19		10		9		116		60		56
Pass-by Trips	17.2%		1,986		30		15		15		179		90		90
Net New Trips ¹			9,560		143		77		66		863		453		411
Parcel Two: Fueling Station	12 FP	162.78	1,953	10.06	121	50%	50	50%	60	13.38	161	50%	80	50%	80
Internalized Trips	10.0%		195		12		6		6		16		8		8
Pass-by Trips	56.0%		984		61		30		30		81		40		40
Net New Trips ¹			774		48		24		24		64		32		32
Parcel Three: Fast-Food Rest w/Drive thru	4,000 TSF	496.12	1,984	53.11	212	51%	108	49%	104	34.64	139	52%	72	48%	67
Internalized Trips	10.0%		198		21		11		10		14		7		7
Pass-by Trips	50.0%		893		96		48		48		62		31		31
Net New Trips ¹			893		96		50		46		62		34		29
Total Site Net Trips			11,226		287		150		136		989		518		471
Yucca Valley Retail Specific Plan (Dated August 2008)															
Parcel One: Wal-Mart	186,146 TSF	57.24	10,541	1.06	195	68%	133	32%	62	4.98	917	50%	459	50%	459
Internalized Trips	10.0%		1,054		20		13		6		92		46		46
Pass-by Trips	17.0%		1,613								140		70		70
Net New Trips ²			7,874		176		119		56		685		343		343
Parcel Two: Retail Store	3,500 TSF	42.70	149	0.96	3	62%	2	38%	2	3.71	13	48%	6	52%	7
Internalized Trips	10.0%		15		0		0		0		1		1		1
Pass-by Trips			0		0		0		0		0		0		0
Net New Trips ²			135		3		1		2		12		5		7
Parcel Three: Fast-Food Rest w/Drive thru	4,000 TSF	496.12	1,984	45.42	182	51%	93	49%	89	32.65	131	52%	68	48%	63
Internalized Trips	10.0%		198		18		9		9		13		7		6
Pass-by Trips	50.0%		893		82		41		41		59		29		29
Net New Trips ²			893		82		43		39		59		32		27
Total Site Net Trips			8,901		260		163		97		755		379		376
Yucca Valley Retail Specific Plan (As Currently Proposed)															
Parcel One: Wal-Mart	186,146 TSF	57.24	10,541	1.06	195	68%	133	32%	62	4.98	917	50%	459	50%	459
Internalized Trips	10.0%		1,054		20		13		6		92		46		46
Pass-by Trips	17.0%		1,613								140		70		70
Net New Trips ²			7,874		176		119		56		685		343		343
Parcel Two: Fast-Food Rest w/Drive thru	2,230 TSF	496.12	1,106	45.42	101	51%	52	49%	50	32.65	73	52%	38	48%	35
Internalized Trips	10.0%		111		10		5		5		7		4		3
Pass-by Trips	50.0%		498		46		23		23		33		16		16
Net New Trips ²			498		46		24		22		33		18		15
Parcel Three: Fast-Food Rest w/Drive thru	2,423 TSF	496.12	1,202	45.42	110	51%	56	49%	54	32.65	79	52%	41	48%	38
Internalized Trips	10.0%		120		11		6		5		8		4		4
Pass-by Trips	50.0%		541		50		25		25		36		18		18
Net New Trips ²			541		50		26		24		36		19		16
Total Site Net Trips			8,913		271		169		102		753		379		374

Notes: TSF = thousand square feet; FP = vehicle fueling position

¹ The trip generation was extracted from Final Environmental Impact Report (EIR) of Retail Center Specific Plan, dated March 2008

² Trip generation based on rates contained in Institute of Transportation Engineers (ITE) *Trip Generation* (9th Edition), for Land Use 815 - Free-Standing Discount Store, Land Use 934 - Fast-Food Restaurant with Drive-Through Window, Land Use 826 - Specialty Retail Center. Pass-by trip percentages from ITE *Trip Generation Handbook*, 2004.

Exhibit "G"

This document prepared by:

Wal-Mart Real Estate Business Trust
Sam M. Walton Development Complex
2001 S.E. 10th Street
Bentonville, AR 72716-0550

After recording return to:

Stewart Title Guaranty Company
10 South Riverside Plaza, Suite 1450
Chicago, IL 60606
Attn: Michael Lebovitz

SANITARY SEWER EASEMENT AGREEMENT

This **SANITARY SEWER EASEMENT AGREEMENT** ("Agreement") is made effective _____, 2013, between **WAL-MART REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust, with an address of 702 S.W. 8th Street, Bentonville, AR 72716, with a mailing addresses of Sam M. Walton Development Complex, 2001 S.E. 10th Street Bentonville, AR 72716-0550, Attn: Realty Management- ("Grantor"); and **CFT DEVELOPMENTS, LLC**, a California limited-liability company, whose address is 1683 Walnut Grove Road Avenue, Rosemead, CA 91770 ("Grantee"). The following statements are a material part of this Agreement:

WHEREAS, Grantor is the owner of a tract of land depicted as Tract 1 on **Exhibit A**, attached hereto and made a part hereof; and

WHEREAS, Grantee will be by the time this instrument is recorded the owner of that tract of land depicted as Tract 2 on **Exhibit A**; and

WHEREAS, Grantor wishes to quitclaim, and Grantee wishes to receive, easements over, under and across Tract 1 for sanitary sewer only.

THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged, the following grants, agreements, covenants and restrictions are made:

1. Grantor quitclaims to Grantee perpetual, non-exclusive right, privilege and easements (collectively, the "Easement") for the benefit of Grantee to tie into and use, the existing sanitary sewer lines (collectively, the "Utility System"), as such utility lines exist from time to time, as depicted in **Exhibit B**, attached hereto and made a part hereof. Grantee shall, at Grantee's sole cost and expense, construct and install all initial improvements (collectively "Grantee's Improvements"), to tie into, or otherwise utilize, the existing Utility System.

tenants or anyone else using the Grantee Improvements and the Utility System. Grantee further agrees Grantee shall, at all times during the duration of this Agreement, maintain and pay for comprehensive general liability insurance affording protection to Grantor and Grantee, and naming Grantor, and Wal-Mart Stores, Inc., a Delaware corporation ("Wal-Mart"), as an additional insureds on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$2,000,000.00 for each occurrence. Grantee further agrees, upon request, to deliver to Grantor a certificate or certificates from an insurance company or insurance companies satisfactory to Grantor evidencing the existence of such insurance and naming Grantor and Wal-Mart as an additional insured.

9. Grantee, and Grantee's successors and assigns, shall indemnify, defend and hold harmless Grantor from and against any and all losses, liabilities (including strict liability), claims, causes of action, damages, injuries, expenses and costs, including without limitation reasonable attorney's fees of any settlement, judgment or claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Grantor, its successors and assigns, by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of the escape, seepage, leakage, spillage, emission, discharge or release of any hazardous substance resulting from the operations of Grantee upon or under any tract of land owned by Grantor including without limitation, any losses, liabilities (including strict liability), damage, injuries, expenses and costs, including, without limitation, reasonable attorney's fees, of any settlement or judgment or claims asserted or arising under, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, any so called federal, state or local "Superfund" or "Superlien" statute, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any hazardous substance.

10. In exercising any rights and privileges under this Agreement, Grantee shall comply fully with any federal, state or local laws, regulations, ordinances, permits or other authorizations or approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the Storm Water General Permit for Discharges Associated with Construction Activities (collectively the "Storm Water Requirements"). In addition to any other provisions of any Storm Water Requirements:

A. Grantee shall, as required by any Storm Water Requirements, prepare a Storm Water Pollution Prevention Plan (the "Grantee SWPPP") for that part of the property owned by Grantor and shown on Exhibit A on which Grantee plans to conduct earth-disturbing activities. The Grantee SWPPP shall identify and describe the role of any other contractor, entity or individual contemporaneously undertaking earth-disturbing activities in complying with the Storm Water Requirements, and shall identify the manner in which Grantee and any such contractor, entity or individual shall coordinate to comply with the Storm Water Requirements and to avoid negatively impacting any erosion or sediment controls during earth-disturbing activities. Grantee shall provide Grantor with a copy of the Grantee SWPPP prior to initiating any earth-disturbing activities.

13. This Easement is a permanent easement and will continue in full force and effect so long as the Easement is used by Grantee, its successors and assigns for the purposes set forth in this Agreement. Grantor and Grantee agree Grantor shall have the right, at Grantor's sole option and expense, to relocate the Easement upon Grantor's property. Grantee may release and extinguish all of Grantee's rights granted pursuant to this Agreement, upon fifteen (15) days prior written notice to Grantor.

14. Grantee acknowledges that it is Grantee's sole responsibility to obtain any governmental permits to perform any required maintenance checks, and to abide by any governmental regulations associated with the use, construction, patrolling, replacement and maintenance of Grantee's Improvements, or the Utility System, as applicable.

15. Notwithstanding any other provision of this Agreement, should public sanitary sewer system infrastructure become available for Grantee to utilize after executing this Agreement, Grantor may terminate the easement contained herein, and Grantee agrees to cooperate in signing documents to vacate the easement.

16. This Agreement may be executed in one or more counterparts (including by facsimile), all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

[Signature pages follow]

Will Serve Letter Only



9/13/13

Panda Express Restaurant Group

New Location in Walmart Shopping center on Hwy 62 & Avalon, YV

Your project is located in Southern California Edison (SCE) service territory. SCE will serve the above subject project's electrical requirements per the California Public Utilities Commission and Federal Energy Regulatory Commission tariffs.

SCE may need to conduct utility studies, where applicable, to assess whether additions or modifications to the existing electric infrastructure are required to serve this project. Where applicable, SCE has attached Appendix (B) which not only describes the study, and permitting, but includes a Project Information Sheet that will need to be completed by you and submitted to SCE if your project is at a point where SCE has to determine the required electrical utility work. This Will-Serve letter does not imply that either: (i) these studies have been completed, or (ii) that any required California Environmental Quality Act (CEQA) analysis of project-related electric utility impacts has been conducted.

I am the SCE Design Representative currently assigned to this project. SCE or Applicant will design and construct all required electrical infrastructure to serve this project provided you enter into the applicable contractual agreements with SCE identify scope of electrical utility work required, and supply the following information:

- Site plans as required
- Required contracts and agreements (fully executed)
- Applicable fees
- Local permits
- Required easement documents

Your project will be scheduled for construction once SCE has all the necessary information for your project and you have submitted or agreed to the applicable requirements as stated above, and paid any necessary fees.

If your project will not require SCE services, please notify us so that we can update our records.

SCE appreciates your business. If you have any questions, please feel free to call me at (760) 369-5449.

Sincerely,

SCE Design Representative


Enclosure: Appendix B, where applicable

Rev. 07/09/12

DS-125



Southern
California
Gas Company

A  Sempra Energy utility

Southern California
Gas Company
1981 W. Lugoia Avenue
Redlands, CA 92374-9720

Mailing Address:
PO Box 3063
Redlands, CA 92373-0306

September 20, 2013

Panda Restaurant Group, Inc.
1683 Walnut Grove Avenue
Rosemead, CA 91770

Attn: Debbie Wehrlic

RE: Will Serve Letter Request for – 41-2013-09-00027
S.E. Corner of Hwy 62 & Avalon Avenue, Yucca Valley, CA

Dear Debbie,

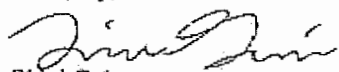
Thank you for inquiring about the availability of natural gas service for your project. We are pleased to inform you that Southern California Gas Company (SoCalGas) has facilities in the area where the above named project is being proposed. The service would be in accordance with SoCalGas' policies and extension rules on file with the California Public Utilities Commission (Commission) at the time contractual arrangements are made.

This letter should not be considered a contractual commitment to serve the proposed project, and is only provided for informational purposes only. The availability of natural gas service is based upon natural gas supply conditions and is subject to changes in law or regulation. As a public utility, SoCalGas is under the jurisdiction of the Commission and certain federal regulatory agencies, and gas service will be provided in accordance with the rules and regulations in effect at the time service is provided. Natural gas service is also subject to environmental regulations, which could affect the construction of a main or service line extension (for example, if hazardous wastes were encountered in the process of installing the line). Applicable regulations will be determined once a contract with SoCalGas is executed.

If you need assistance choosing the appropriate gas equipment for your project, or would like to discuss the most effective applications of energy efficiency techniques, please contact our area Service Center at 800-427-2200.

Thank you again for choosing clean, reliable, and safe natural gas, your best energy value.

Sincerely,



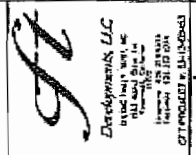
Fidel Galvan

Regional Pipeline Project Manager

LEGEND

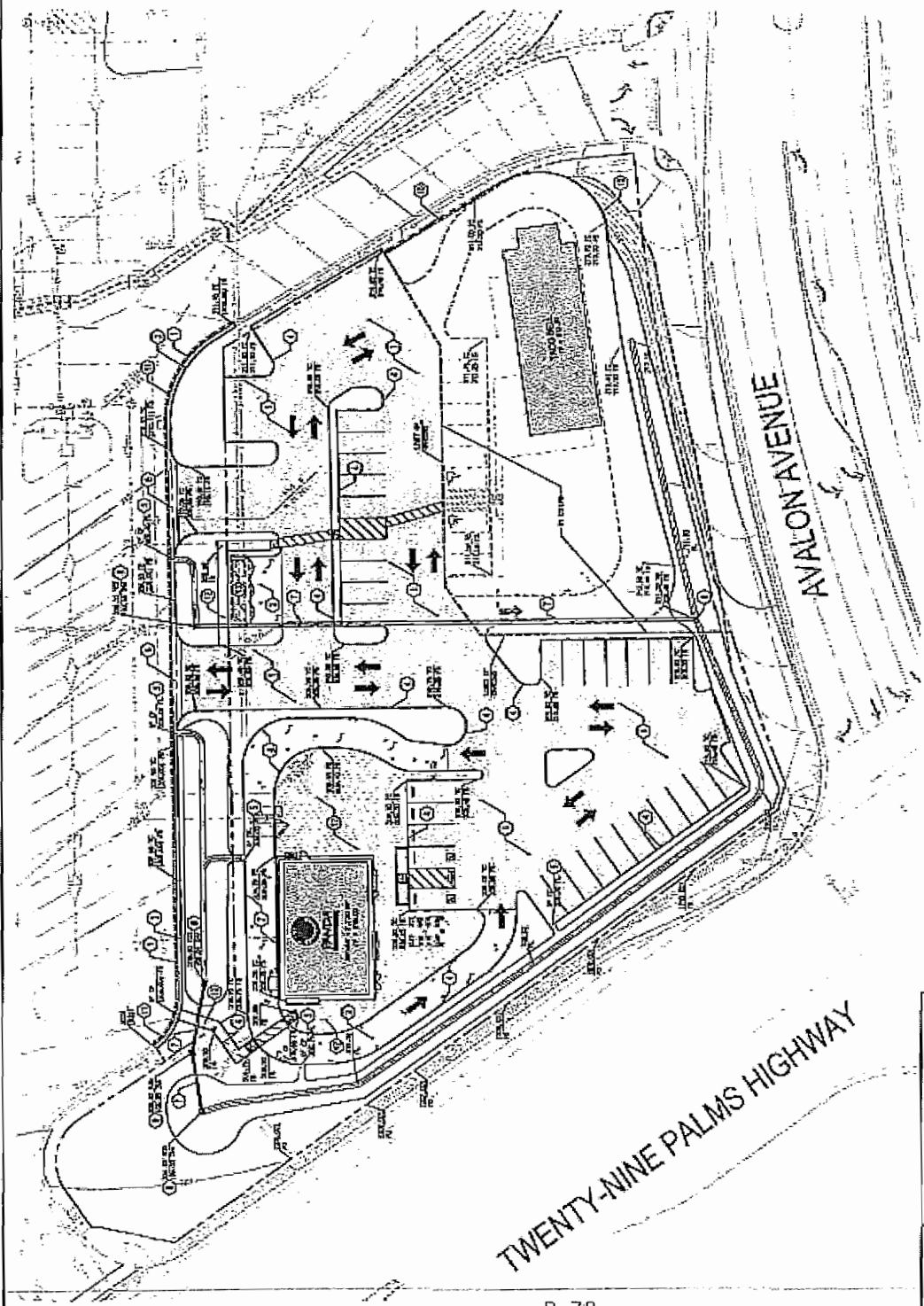
	EXISTING WALLS
	EXISTING CONCRETE
	EXISTING PARKING
	EXISTING ASPHALT

- KEY NOTES:**
1. AS SHOWN.
 2. SEE PLAN.
 3. 4" OF 10# BAR, 48" ON CENTER.
 4. 3" OF CONC.
 5. 4" ASK CONC FINISH.
 6. 4" ASK CONC FINISH WITH 1" OF 1/2" SAND FINISH.
 7. 1" OF 1/2" SAND FINISH.
 8. 1" OF 1/2" SAND FINISH.
 9. 1" OF 1/2" SAND FINISH.
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PANDA EXPRESS
 DEVELOPMENT, LLC
 10000 W. PALMS BLVD., SUITE 100
 PALM SPRINGS, CA 92261
 (951) 485-1111
 www.pandaexpress.com

TOWN OF YUCCA VALLEY
PRELIMINARY GRADING AND DRAINAGE PLAN
 #1919-04, 84801 TO PALMS HIGHWAY, YUCCA VALLEY, CA 92286.



DIGALERT
 DIGITAL ALERT SYSTEM
 1-800-451-7273
 www.digalert.com

ULI
 ULI CONSULTING ENGINEERS, INC.
 10000 W. PALMS BLVD., SUITE 100
 PALM SPRINGS, CA 92261
 (951) 485-1111
 www.uliconsulting.com

SEAL
 [Professional Engineer Seal]

APPROVED BY:
 [Signature]
 [Title]



PLANS PREPARED BY:
 [Signature]
 [Title]

NO.	DATE	DESCRIPTION
1	11/15/2011	ISSUED FOR PERMIT
2	11/15/2011	ISSUED FOR PERMIT
3	11/15/2011	ISSUED FOR PERMIT
4	11/15/2011	ISSUED FOR PERMIT
5	11/15/2011	ISSUED FOR PERMIT
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49	11/15/2011	ISSUED FOR PERMIT
50	11/15/2011	ISSUED FOR PERMIT



**Developments,
LIFE TIME FITNESS
WORLD GYM**
11000 W. 29th Ave.
Denver, CO 80231

CONTRACT NO. 11-03727-A-100

DATE: 11-03-2011

PROJECT: 11-03-2011

OWNER: GARY WANG

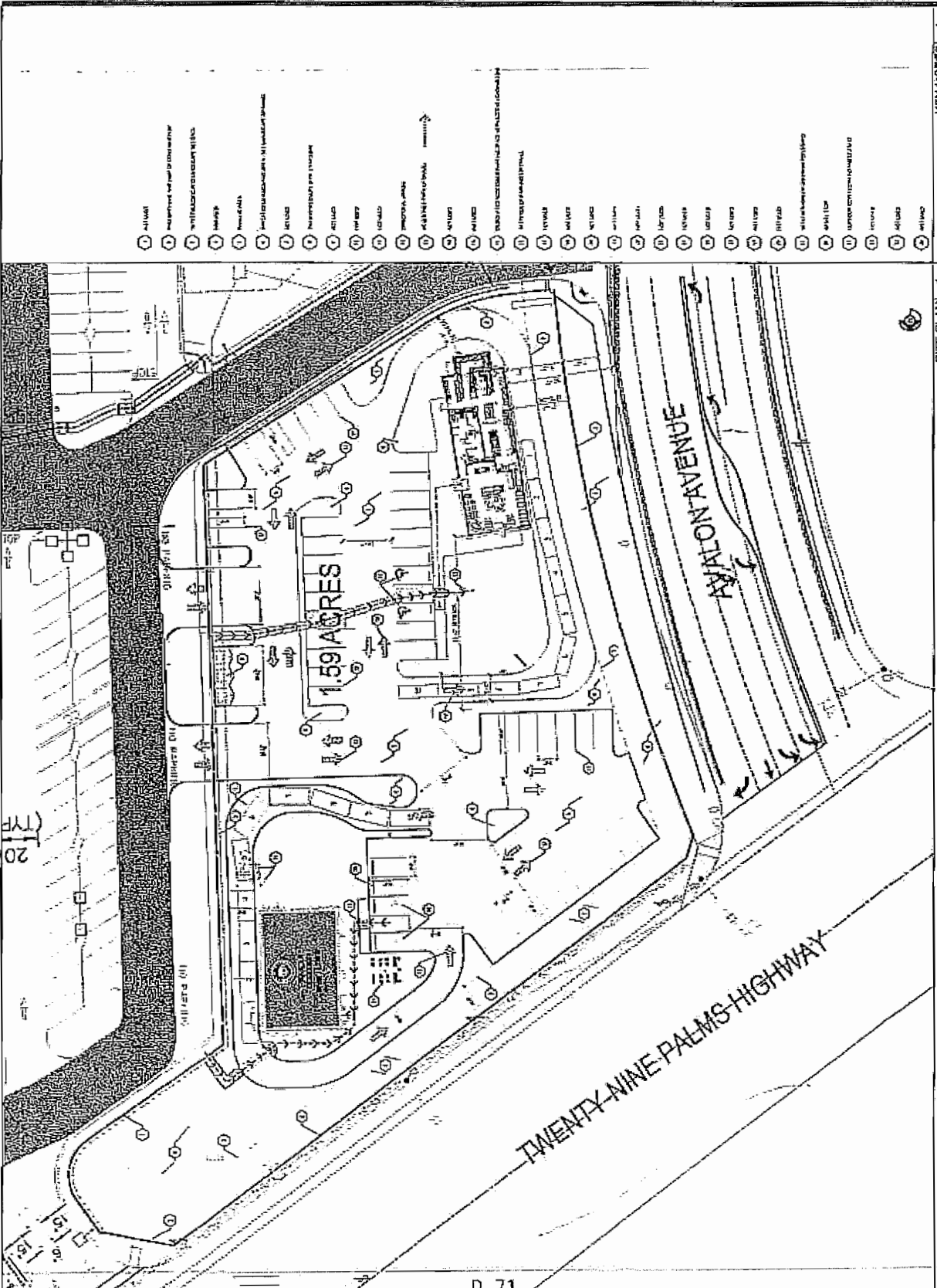
ARCHITECT: PANDA EXPRESS



PROJECT: 11-03-2011

PROJECT: 11-03-2011

A-100



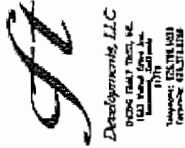
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- 30. 11-03-2011

KEY NOTES: A

SITE PLAN: 1

PROJECT: 11-03-2011

PROJECT: 11-03-2011



Developments, LLC
 1000 PASEO DE LA OLA, SUITE 100
 1000 PASEO DE LA OLA, SUITE 100
 CAROLINA BEACH, NC 28511
 PHONE: (919) 383-3333
 EMAIL: info@jfd.com

THIS DRAWING IS THE PROPERTY OF PANDA EXPRESS INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF PANDA EXPRESS INC. IS STRICTLY PROHIBITED.

RIVEROUS

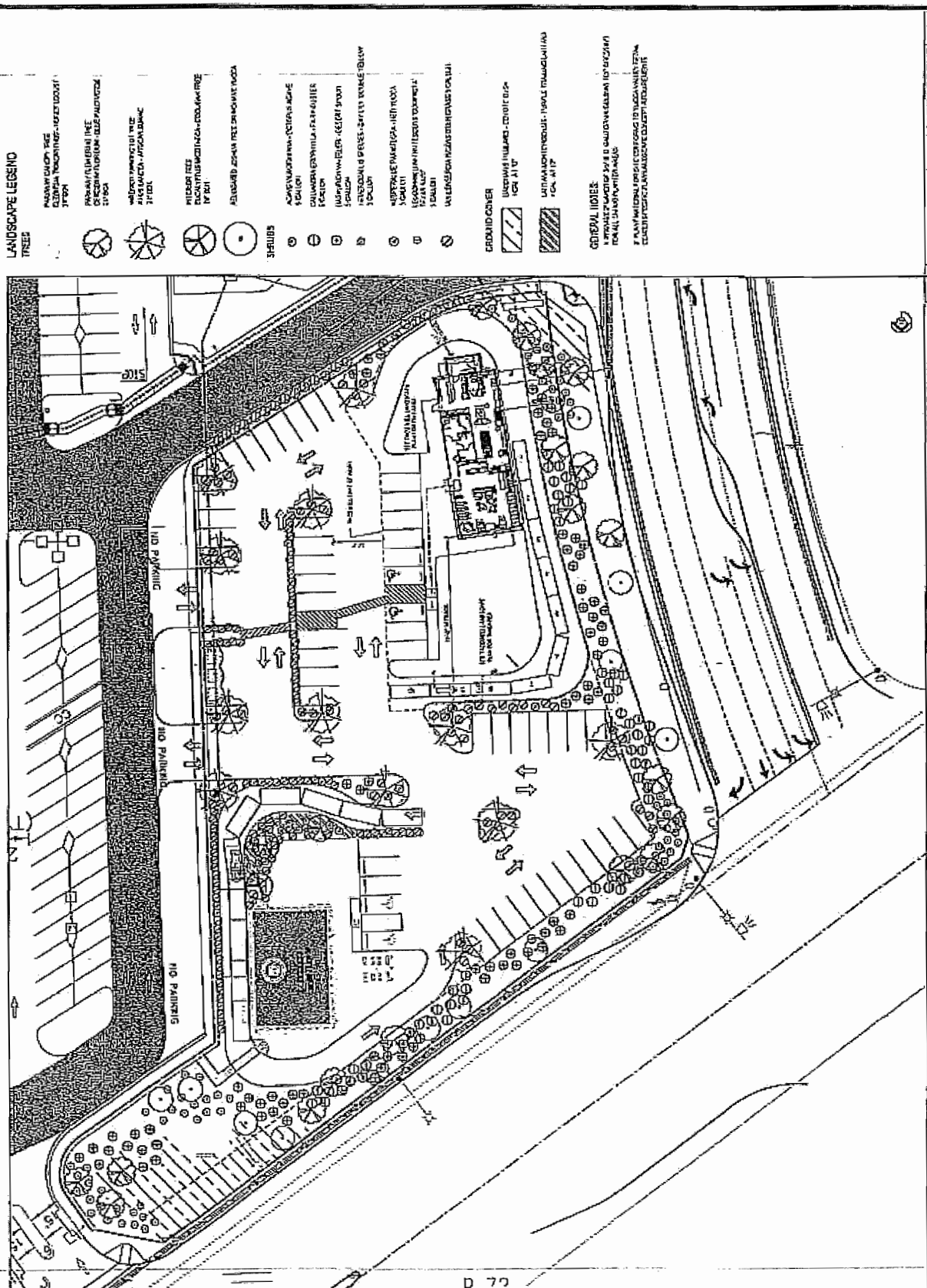
DESIGN DATE

GARY WANG
 4 J. HANCOCK ST., SUITE 1
 WASHINGTON, DC 20004
 PHONE: (202) 775-1111
 EMAIL: gary.wang@pe.com

PANDA EXPRESS
 1000 PASEO DE LA OLA, SUITE 100
 CAROLINA BEACH, NC 28511
 PHONE: (919) 383-3333
 EMAIL: info@pandaexpress.com

PANDA EXPRESS
 1000 PASEO DE LA OLA, SUITE 100
 CAROLINA BEACH, NC 28511
 PHONE: (919) 383-3333
 EMAIL: info@pandaexpress.com

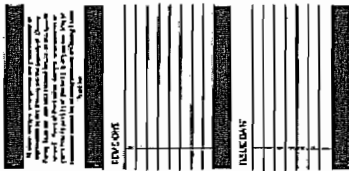
L-100
 PRELIMINARY LANDSCAPE PLAN



LANDSCAPE LEGEND
 1 LANDSCAPE LEGEND 1
 10 SCALE L-100

St

Developments,
LINC, Inc., Inc., 44
2501 River Road, Suite 200
Atlanta, Georgia 30329
(404) 525-4400

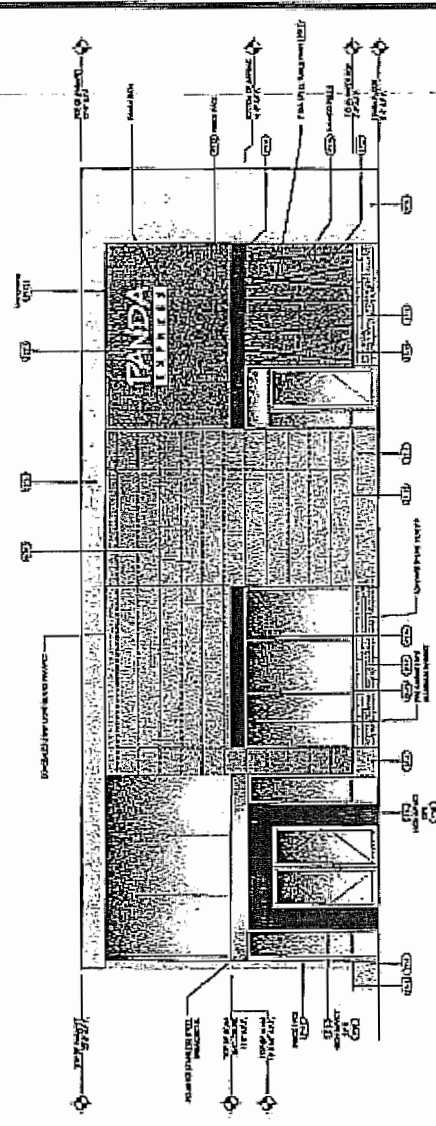


GRAVEL FIN
SYNTHETIC GRANITE
KNORRELETT
GARY WANG
GARY WANG
& ASSOCIATES, INC.
1100 Peachtree Street, N.E., 8th Fl.
Atlanta, Georgia 30309
Tel: (404) 525-1100
Fax: (404) 525-1101



PANDA EXPRESS
1370 W. Peachtree Street, N.E.
Atlanta, Georgia 30309
Tel: (404) 525-9888

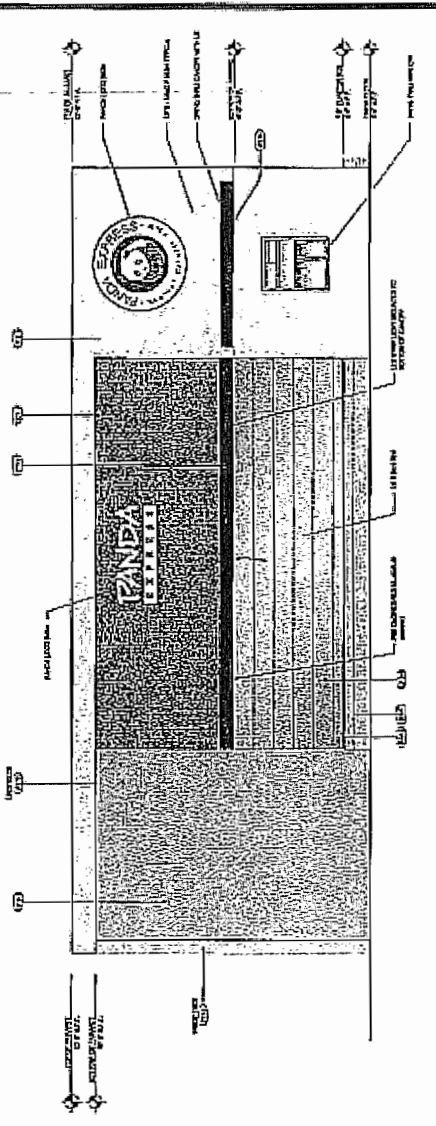
A-200
EXTERIOR ELEVATION



WEST ELEVATION 2
Scale: 1/8" = 1'-0" A-200

EXTERIOR FINISH SCHEDULE Material Schedule (A-200) (A-200)

SYMBOL	FINISH	DESCRIPTION	NOTES
01	Concrete	CONCRETE	ACCORDING TO SECTION
02	Gravel	GRAVEL FINISH	SEE SECTION
03	Synthetic Granite	SYNTHETIC GRANITE	SEE SECTION
04	Knorrelett	KNORRELETT	SEE SECTION
05	Gary Wang	GARY WANG	SEE SECTION
06	Gary Wang & Associates	GARY WANG & ASSOCIATES	SEE SECTION
07	1100 Peachtree Street	1100 PEACHTREE STREET	SEE SECTION
08	Atlanta, Georgia	ATLANTA, GEORGIA	SEE SECTION
09	Tel: (404) 525-1100	TEL: (404) 525-1100	SEE SECTION
10	Fax: (404) 525-1101	FAX: (404) 525-1101	SEE SECTION



EAST ELEVATION 1
Scale: 1/8" = 1'-0" A-200



Developments, LLC
11665 W. 39th Ave., Suite 100
Denver, CO 80231
Phone: 303.425.8800

After 90 days, any work not completed shall be considered abandoned. The architect shall not be responsible for the completion of the project.

REVISE
DATE

SPEC DATE

EXHAUST GRN

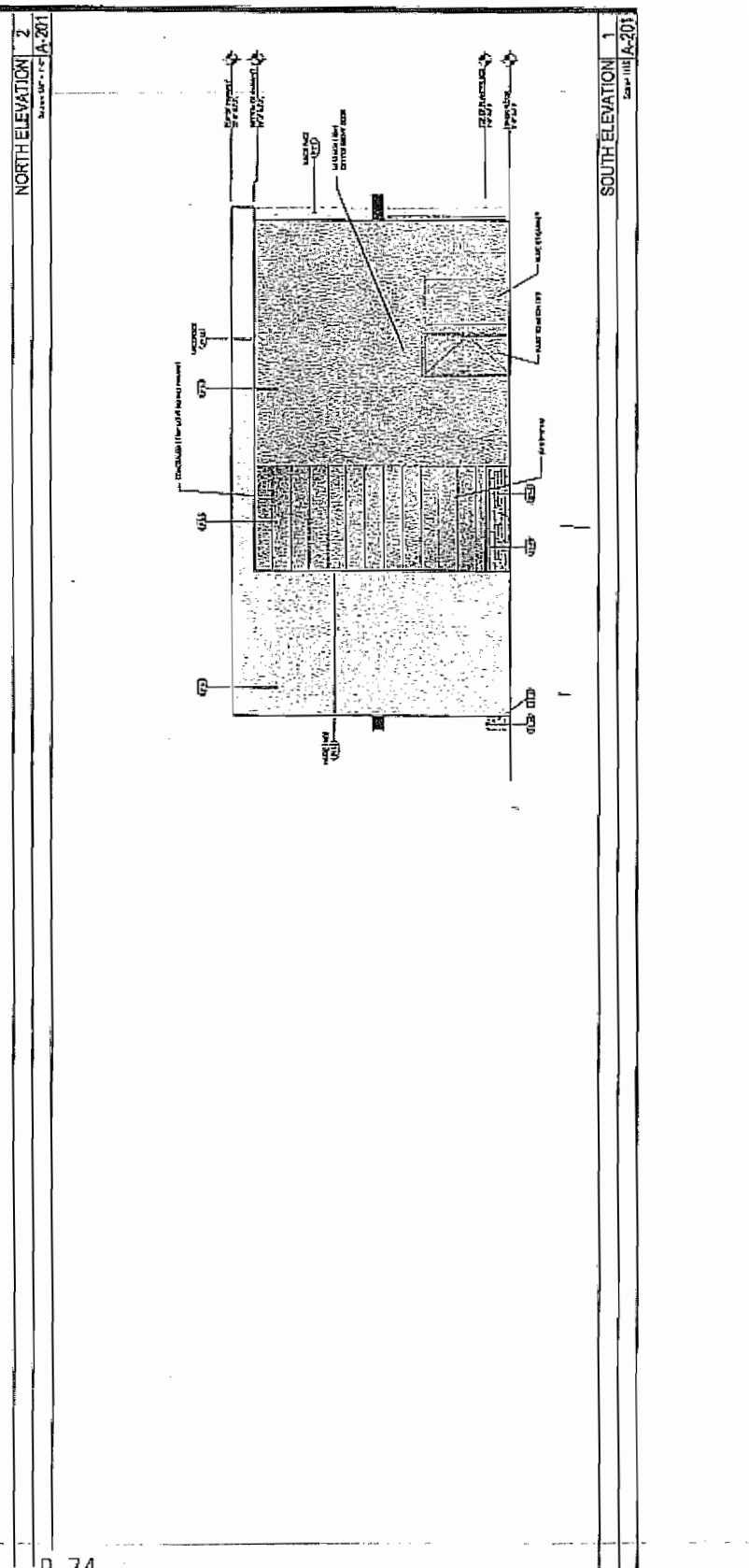
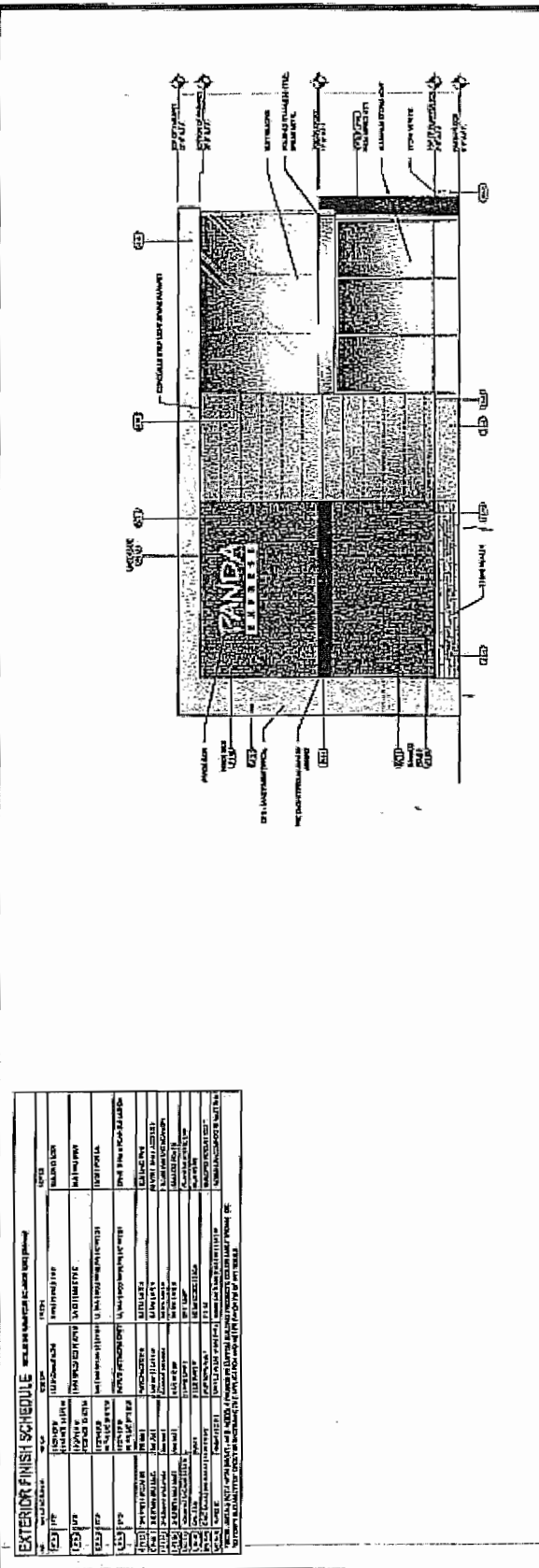
UTINGER SATIBAO ARCHITECTURE INC

SARY WANG & ASSOCIATES INC
11111 E. 15th Ave., Suite 100
Denver, CO 80231
Phone: 303.755.8800



PANDA EXPRESS
11665 W. 39th Ave., Suite 100
Denver, CO 80231

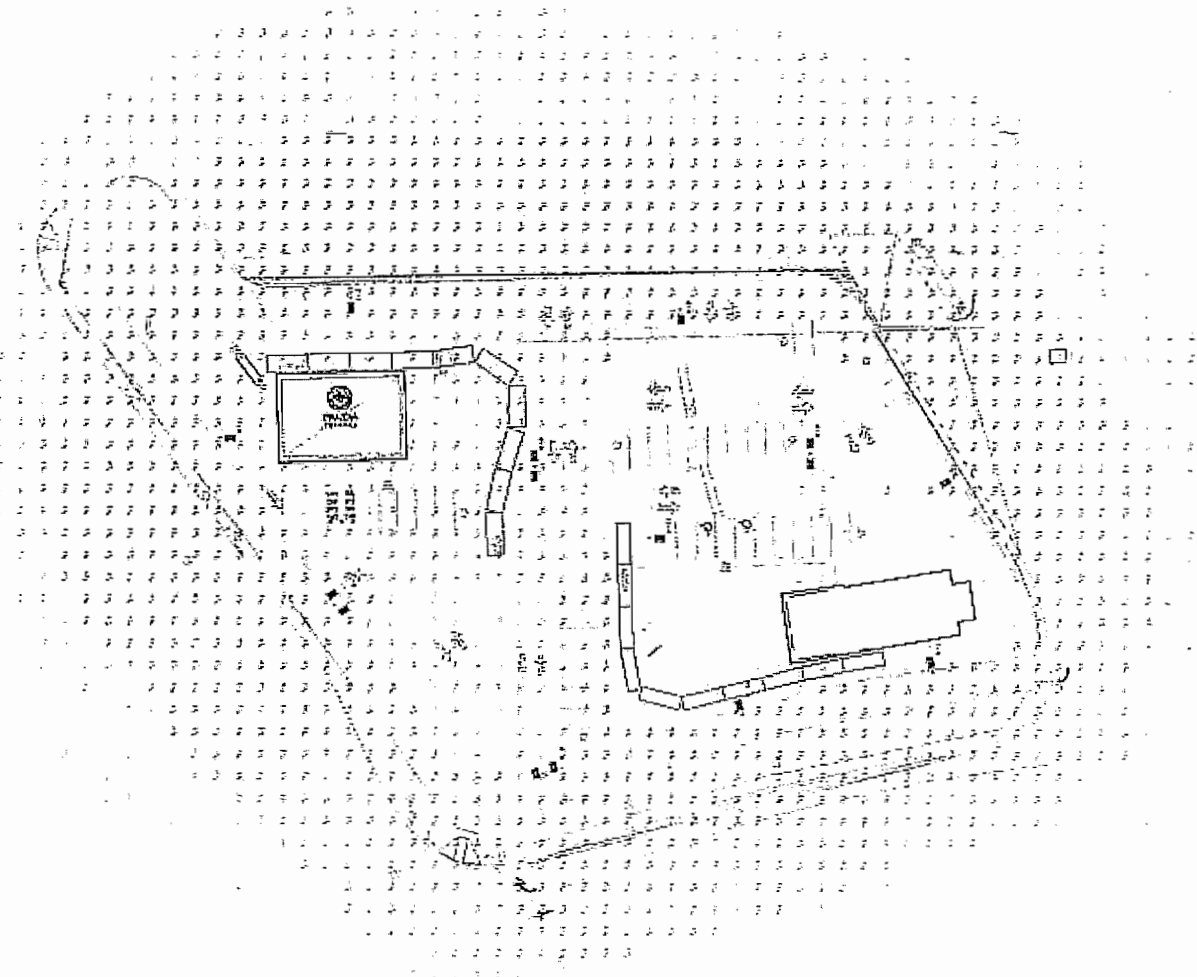
A-201
ELEVATION DRAWING



Item	Quantity	Unit	Notes
1. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
2. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
3. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
4. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
5. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
6. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
7. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
8. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
9. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
10. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru

Item	Quantity	Unit	Notes
1. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
2. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
3. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
4. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
5. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
6. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
7. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
8. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
9. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru
10. 20' x 30' Concrete Pad	1	sq ft	For Drive Thru

Notes:
 1. All dimensions are in feet and inches.
 2. All areas are in square feet.
 3. All areas are to be finished with concrete.
 4. All areas are to be finished with asphalt.
 5. All areas are to be finished with gravel.
 6. All areas are to be finished with dirt.
 7. All areas are to be finished with grass.
 8. All areas are to be finished with trees.
 9. All areas are to be finished with shrubs.
 10. All areas are to be finished with flowers.



NOTICE
ALL DRAWINGS, AND ALL
SPECIFICATIONS, CONTRACT
AGREEMENTS, AND OTHER
DOCUMENTS AND CONDITIONS
HEREON, SHALL BE A PART
OF THIS CONTRACT. THE
DRAWINGS SHALL TAKE
PRECEDENCE OVER THE
SPECIFICATIONS, CONTRACT
AGREEMENTS, AND OTHER
DOCUMENTS AND CONDITIONS
HEREON.

HEP
D
ARCHITECTS
INCORPORATED
1001 14th Street, N.W.
Atlanta, Georgia 30309
Phone 404.521.1200
Fax 404.521.1201



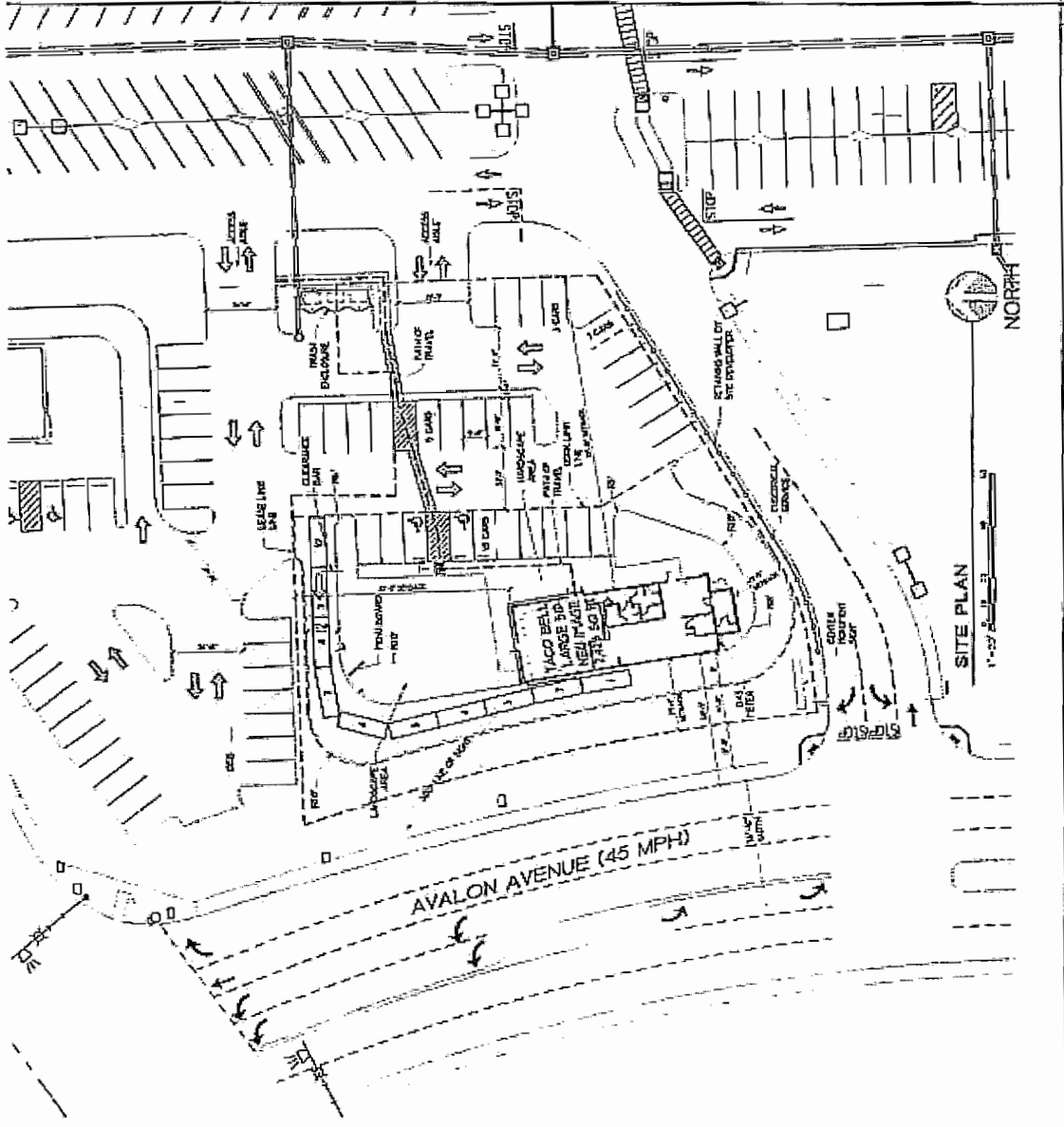
PREPARED FOR
TACO BELL

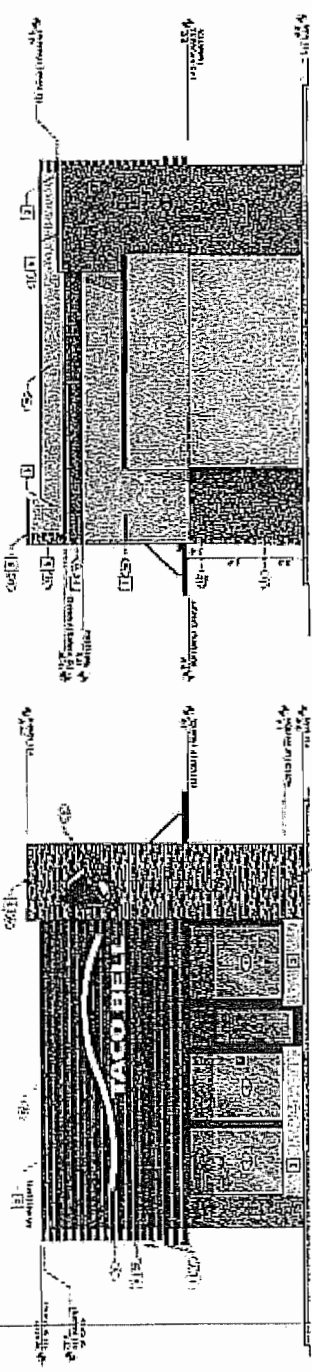
NO.	DATE	REVISION

TACO BELL
1001 14th Street, N.W.
Atlanta, Georgia 30309
Phone 404.521.1200
Fax 404.521.1201

LARGE
SITE PLAN
A0.1

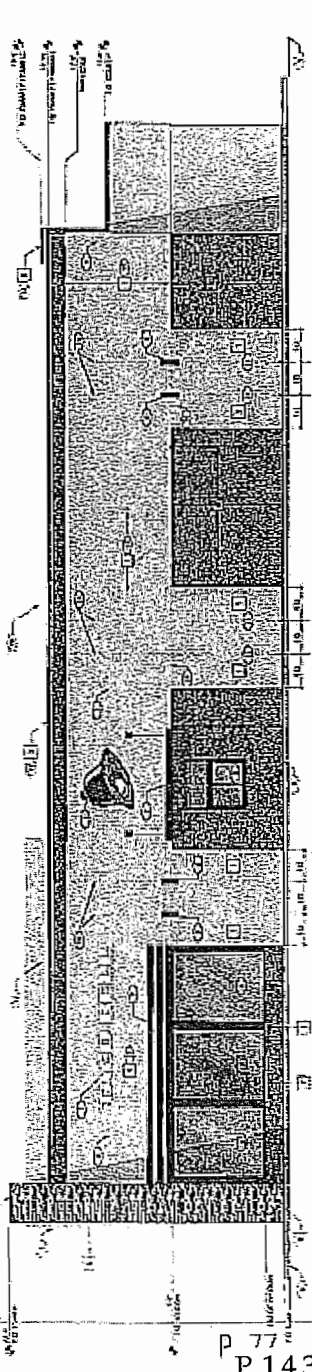
DATE: 11/14/07
SCALE: AS SHOWN



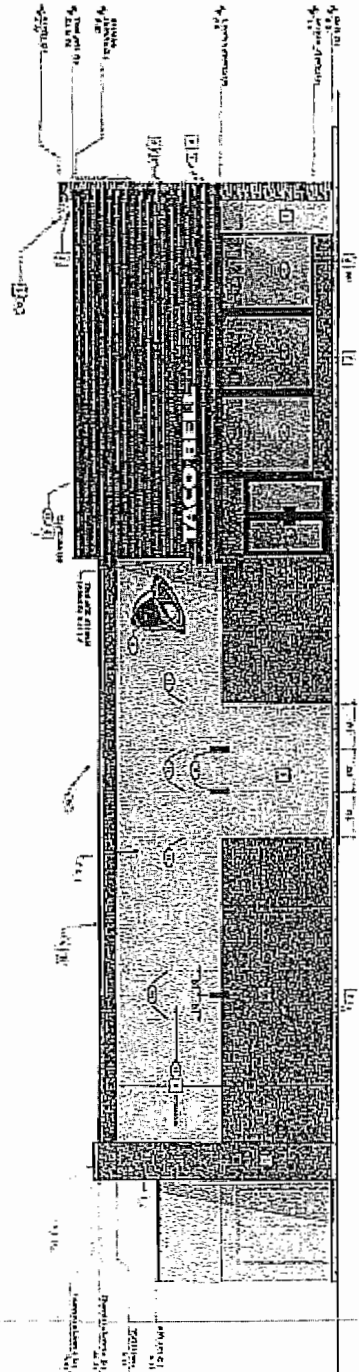


FRONT NORTH ELEVATION

REAR SOUTH ELEVATION



SIDE WEST ELEVATION



SIDE EAST ELEVATION

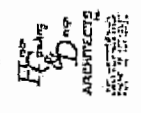
MATERIAL SCHEDULE			
1	WOOD	WOOD	WOOD
2	CONCRETE	CONCRETE	CONCRETE
3	GLASS	GLASS	GLASS
4	BRICK	BRICK	BRICK
5	STUCCO	STUCCO	STUCCO
6	ROOFING	ROOFING	ROOFING
7	PAINT	PAINT	PAINT
8	FINISH	FINISH	FINISH
9	MECHANICAL	MECHANICAL	MECHANICAL
10	ELECTRICAL	ELECTRICAL	ELECTRICAL
11	PLUMBING	PLUMBING	PLUMBING
12	INSULATION	INSULATION	INSULATION
13	FOUNDATION	FOUNDATION	FOUNDATION
14	LANDSCAPE	LANDSCAPE	LANDSCAPE
15	EXTERIOR LIGHTING	EXTERIOR LIGHTING	EXTERIOR LIGHTING
16	EXTERIOR FURNITURE	EXTERIOR FURNITURE	EXTERIOR FURNITURE
17	EXTERIOR SIGNAGE	EXTERIOR SIGNAGE	EXTERIOR SIGNAGE
18	EXTERIOR WALLS	EXTERIOR WALLS	EXTERIOR WALLS
19	EXTERIOR FLOORS	EXTERIOR FLOORS	EXTERIOR FLOORS
20	EXTERIOR ROOFS	EXTERIOR ROOFS	EXTERIOR ROOFS
21	EXTERIOR STAIRS	EXTERIOR STAIRS	EXTERIOR STAIRS
22	EXTERIOR BALCONIES	EXTERIOR BALCONIES	EXTERIOR BALCONIES
23	EXTERIOR PORCHES	EXTERIOR PORCHES	EXTERIOR PORCHES
24	EXTERIOR PATIOS	EXTERIOR PATIOS	EXTERIOR PATIOS
25	EXTERIOR DRIVEWAYS	EXTERIOR DRIVEWAYS	EXTERIOR DRIVEWAYS
26	EXTERIOR PARKING	EXTERIOR PARKING	EXTERIOR PARKING
27	EXTERIOR LANDSCAPING	EXTERIOR LANDSCAPING	EXTERIOR LANDSCAPING
28	EXTERIOR UTILITIES	EXTERIOR UTILITIES	EXTERIOR UTILITIES
29	EXTERIOR SECURITY	EXTERIOR SECURITY	EXTERIOR SECURITY
30	EXTERIOR ACCESSIBILITY	EXTERIOR ACCESSIBILITY	EXTERIOR ACCESSIBILITY
31	EXTERIOR SUSTAINABILITY	EXTERIOR SUSTAINABILITY	EXTERIOR SUSTAINABILITY
32	EXTERIOR HISTORIC PRESERVATION	EXTERIOR HISTORIC PRESERVATION	EXTERIOR HISTORIC PRESERVATION
33	EXTERIOR MONUMENTALITY	EXTERIOR MONUMENTALITY	EXTERIOR MONUMENTALITY
34	EXTERIOR ARTISTRY	EXTERIOR ARTISTRY	EXTERIOR ARTISTRY
35	EXTERIOR CRAFTSMANSHIP	EXTERIOR CRAFTSMANSHIP	EXTERIOR CRAFTSMANSHIP
36	EXTERIOR INNOVATION	EXTERIOR INNOVATION	EXTERIOR INNOVATION
37	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY
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55	EXTERIOR ACCESSIBILITY	EXTERIOR ACCESSIBILITY	EXTERIOR ACCESSIBILITY
56	EXTERIOR SECURITY	EXTERIOR SECURITY	EXTERIOR SECURITY
57	EXTERIOR MONUMENTALITY	EXTERIOR MONUMENTALITY	EXTERIOR MONUMENTALITY
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59	EXTERIOR CRAFTSMANSHIP	EXTERIOR CRAFTSMANSHIP	EXTERIOR CRAFTSMANSHIP
60	EXTERIOR INNOVATION	EXTERIOR INNOVATION	EXTERIOR INNOVATION
61	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY
62	EXTERIOR SUSTAINABILITY	EXTERIOR SUSTAINABILITY	EXTERIOR SUSTAINABILITY
63	EXTERIOR ACCESSIBILITY	EXTERIOR ACCESSIBILITY	EXTERIOR ACCESSIBILITY
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66	EXTERIOR ARTISTRY	EXTERIOR ARTISTRY	EXTERIOR ARTISTRY
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69	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY
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72	EXTERIOR SECURITY	EXTERIOR SECURITY	EXTERIOR SECURITY
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85	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY
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93	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY	EXTERIOR TECHNOLOGY
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98	EXTERIOR ARTISTRY	EXTERIOR ARTISTRY	EXTERIOR ARTISTRY
99	EXTERIOR CRAFTSMANSHIP	EXTERIOR CRAFTSMANSHIP	EXTERIOR CRAFTSMANSHIP
100	EXTERIOR INNOVATION	EXTERIOR INNOVATION	EXTERIOR INNOVATION

TACO BELL
 LARGE 50 (WITH NEW IMAGE)
 SITE #309695
 SEC OF TWENTYNINE PALMS & AVALON AVE.
 YUCCA VALLEY, CA

HCO
 ARCHITECT

NOTICE

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PREPARED FOR
SPECIAL CONTRACT
CONSTRUCTION
FROM ARCHITECT

Table with columns for CONTRACT NO., PROJECT NO., SHEET NO., DATE, and other project details.

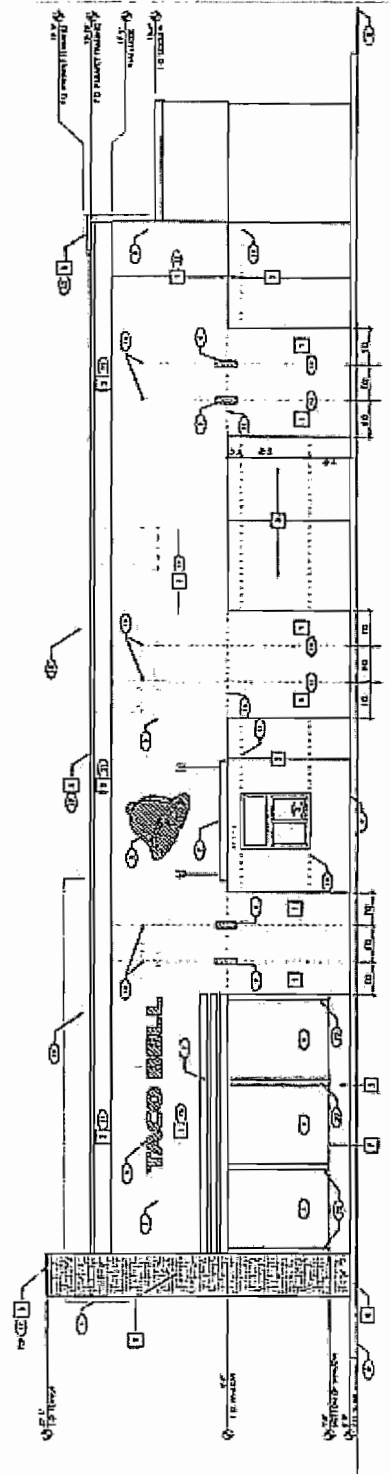
FACE RELL



LARGE
ARCHITECTURE
EXTERIOR
ELEVATIONS

A4.0

DATE



RIGHT SIDE ELEVATION

DATE

Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

GENERAL NOTES

GENERAL NOTES

GENERAL NOTES

GENERAL NOTES

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Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

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Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

Table with columns for ITEM NO., ITEM DESCRIPTION, and QUANTITY. It lists materials and finishes for the elevation.

RIGHT SIDE ELEVATION

RIGHT SIDE ELEVATION

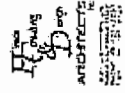
RIGHT SIDE ELEVATION

RIGHT SIDE ELEVATION

RIGHT SIDE ELEVATION

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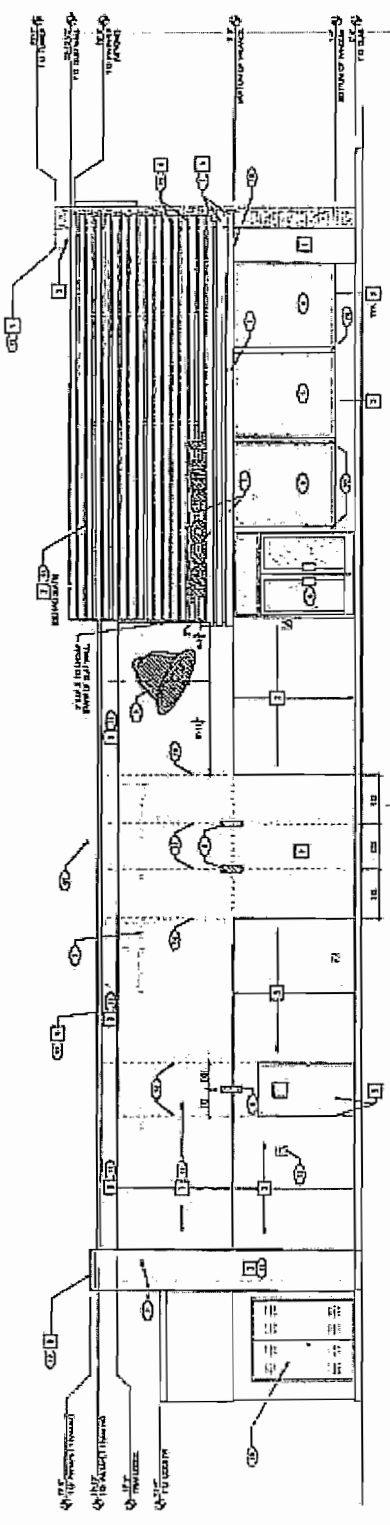
PREPARED FOR:
 FEDERAL
 FACILITY
 20000 ...
 ...
 ...

NO.	DESCRIPTION	DATE
1
2
3
4
5
6
7
8
9
10

LARFGE
 ARCHITECTS PC
**EXTERIOR
 ELEVATIONS**

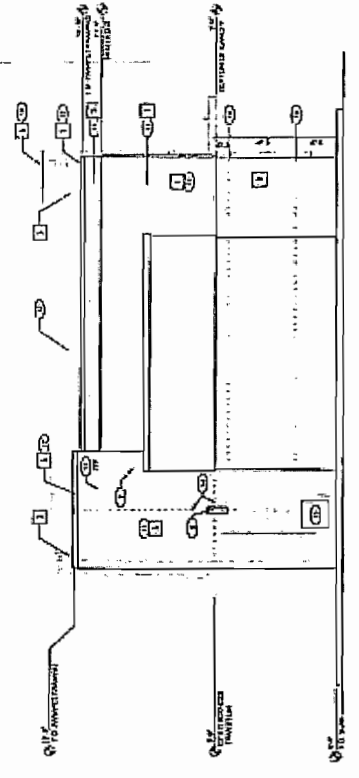
A4.1

DATE: ...
 DRAWING NO.: ...

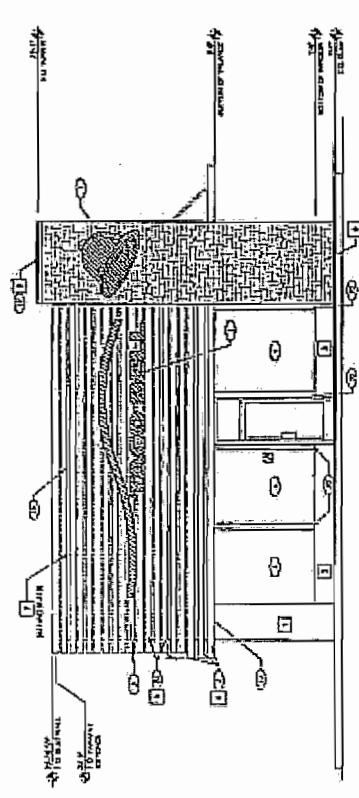


SCALE: 1/8" = 1'-0"

LEFT SIDE ELEVATION 10-10-18 A



REAR ELEVATION 10-10-18 B



RIGHT ELEVATION 10-10-18 C

LEGEND - PLANT MATERIAL SELECTION

- SYMBOLS / CATEGORY / DESCRIPTION**
- PLANT MATERIAL TO BE PLANTED AT THE TIME OF CONSTRUCTION
 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE
 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE
 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE
 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE
 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE
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 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE
 - PLANT MATERIAL TO BE PLANTED AT A LATER DATE

- SYMBOLS / CATEGORY / DESCRIPTION**
- LOW TO MEDIUM SOILS, DRIFTY MEDIUM SANDS AND SANDSTONES
 - SOILS WITH HIGH WATER TABLE - POISSON'S RATIO
 - SOILS WITH HIGH WATER TABLE - POISSON'S RATIO
 - SOILS WITH HIGH WATER TABLE - POISSON'S RATIO
 - SOILS WITH HIGH WATER TABLE - POISSON'S RATIO
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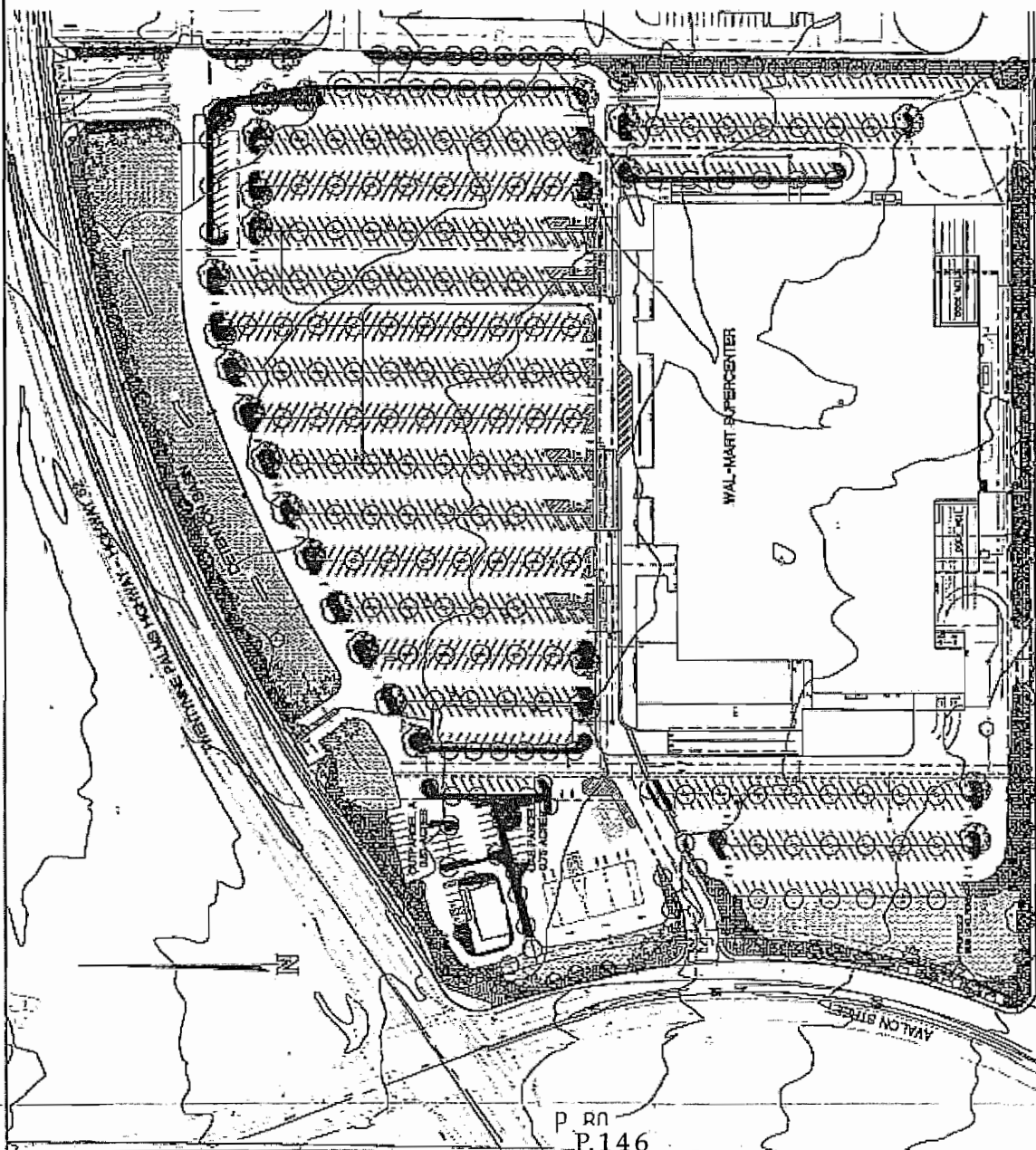


NASLAND ENGINEERING
 10000 WILSON AVENUE, SUITE 100
 WILSON, CALIFORNIA 94095
 TEL: (415) 947-1100 FAX: (415) 947-1101

LANDSCAPE CONCEPT PLAN
 WAL-MART SUPERCENTER #B56-04
 30000 TWENTY-NINE PALMS HIGHWAY
 YUCCA VALLEY, CALIFORNIA 92384

PARTERRE
 10000 WILSON AVENUE, SUITE 100
 WILSON, CALIFORNIA 94095
 TEL: (415) 947-1100 FAX: (415) 947-1101

TOWN OF YUCCA VALLEY



NO.	DATE	BY	FOR

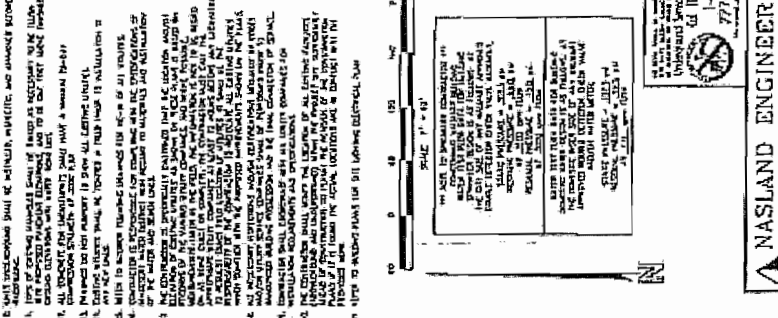
NO.	DATE	BY	FOR

SITE UTILITY NOTES

- 1. ALL UTILITY LINES SHALL BE SHOWN AND DEPICTED TO SCALE.
- 2. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 3. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 4. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 5. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 6. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
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- 20. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.

SEE P. 147 FOR CONTINUING SHEET.

UTILITY PLAN

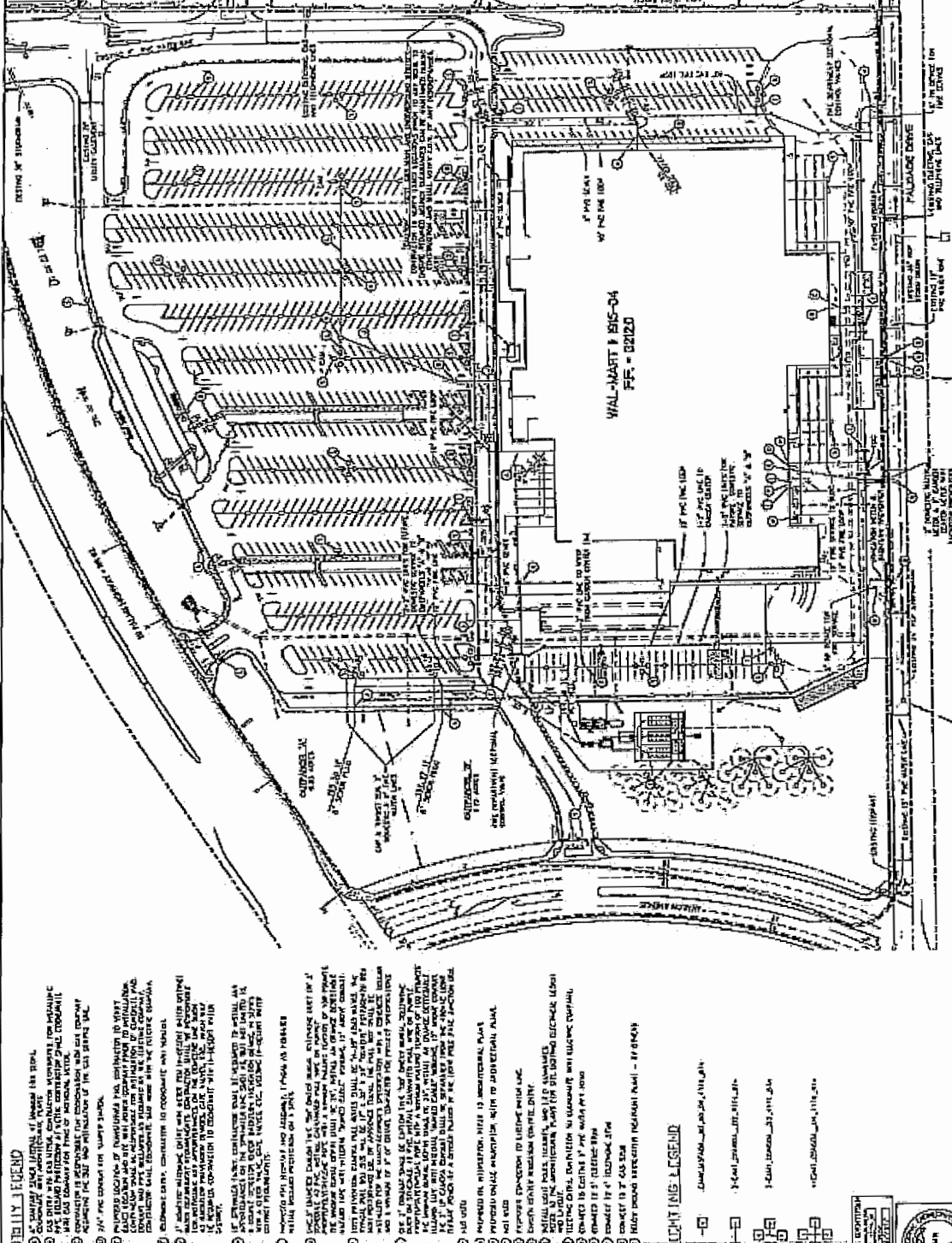


SEE P. 147 FOR CONTINUING SHEET.

NASLAND ENGINEERING
 1801 W. PALMS HIGHWAY, SUITE 200
 YUCCA VALLEY, CA 92286
 TEL: (760) 777-7000
 FAX: (760) 777-7000

TOWN OF YUCCA VALLEY
 UTILITY PLAN
 SHEET # 1
 DATE 11/21/13

Walmart #1115-01, 38501 270 PALMS HIGHWAY, YUCCA VALLEY, CA 92286



UTILITY LEGEND

- 1. ALL UTILITY LINES SHALL BE SHOWN AND DEPICTED TO SCALE.
- 2. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 3. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 4. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 5. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 6. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
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- 8. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 9. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 10. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 11. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 12. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 13. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 14. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 15. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 16. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 17. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 18. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 19. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.
- 20. UTILITIES SHALL BE SHOWN TO THE DEPTH OF 5 FEET UNLESS OTHERWISE NOTED.

REVISIONS

NO.	DATE	DESCRIPTION
1	11/21/13	ISSUED FOR PERMIT

DESIGNED BY: J.P. RAY, P.E.
 DRAWN BY: J.P. RAY, P.E.
 CHECKED BY: J.P. RAY, P.E.
 APPROVED BY: J.P. RAY, P.E.

SCALE: 1" = 10'-0"

DATE: 11/21/13

PROJECT: WALMART #1115-01

LOCATION: 38501 270 PALMS HIGHWAY, YUCCA VALLEY, CA 92286

CLIENT: WALMART #1115-01

PROJECT NO.: 13-0001



Tract Map Application

Date Received 01/22/14
 By D OLSEN
 Fee 2990
 Case # TPM 19525
 EA # _____

Map # 19525
 Parcel
 Tract

General Information

APPLICANT Wal-Mart Stores, Inc. Phone 479-273-4000 Fax _____
 Mailing Address 201 S.E. 10TH Street Email J.Collier@wal-mart.com
 City Bentonville State AR Zip 72716-0550

REPRESENTATIVE Cory Schrack - Nasland Engineering Phone 858-292-7770 Fax _____
 Mailing Address 4740 Ruffner Street Email corys@nasland.com
 City San Diego State CA ZIP 92111

PROPERTY OWNER Wal-Mart Stores, Inc. Phone 479-273-4000 Fax _____
 Mailing Address 201 S.E. 10TH Street Email J.Collier@wal-mart.com
 City Bentonville State AR Zip 72716-0550

Project Information

Project Address 58501 29 Palms Highway Assessor Parcel Number(s) 601-201-37
 Project Location 29 Palms Highway at Avalon Ave.
 Project Description: Portion of the NW 1/4 of the NW 1/4 of Section 32, T1N, R6E, SBBM

Please attach any additional information that is pertinent to the application.

Town of Yucca Valley
 Community Development Department
 Planning Division
 58928 Business Center Dr
 Yucca Valley, CA 92284
 760 369-6575 Fax 760 228-0084
www.yucca-valley.org

Environmental Assessment

1. Property boundaries, dimensions and area (also attach an 8 1/2 x 11" site plan):
North:1256', South:1157.58', East;1356.88', West:718.04'. 26.26 Ac
2. Existing site zoning: C-G 3. Existing General Plan designation: C-G
4. Precisely describe the existing use and condition of the site: Vacant
5. Existing Zoning of adjacent parcels:
North R-S-5 South I East C-G West C-G
6. Existing General Plan designation of adjacent parcels:
North R-S-5 South I East C-G West C-G
7. Precisely describe existing uses adjacent to the site: North, South and West side are existing roads with vacant land beyond. East side is Commercial (Home Depot)
8. Describe the plant cover found on the site, including the number and type of all protected plants: _____
Existing Native vegetation.

Note: Explain any "Yes" or "Maybe" responses to questions below. If the information and responses are insufficient or not complete, the application may be determined incomplete and returned to the applicant.

Yes Maybe No

9. Is the Site on filled or slopes of 15% or more or in a canyon? (A geological and/or soils Investigation report is required with this application.)
10. Has the site been surveyed for historical, paleontological or archaeological resources? (If yes, a copy of the survey report is to accompany this application.)
11. Is the site within a resource area as identified in the archaeological and historical resource element?
12. Does the site contain any unique natural, ecological, or scenic resources?
13. Do any drainage swales or channels border or cross the site?
14. Has a traffic study been prepared? (If yes, a copy of the study is to accompany this application.)
15. Is the site in a flood plain? (See appropriate FIRM)

Project Description

Complete the items below as they pertain to your project. Attach a copy of any plans submitted as part of the project application and any other supplemental information that will assist in the review of the proposed project pursuant to CEQA.

1. Commercial, Industrial, or Institutional Projects:

- A. Specific type of use proposed: Commercial
- B. Gross square footage by each type of use: _____
4,653 Gross SF of Commercial
- C. Gross square footage and number of floors of each building: _____
2,230 SF (Commercial - Panda Express) and 2,423 SF (Commercial - Taco Bell)
- D. Estimate of employment by shift: TBD
- E. Planned outdoor activities: Outdoor Seating Area

2. Percentage of project site covered by:

40 % Paving, 7 % Building, 40 % Landscaping, 13 % Parking

3. Maximum height of structures 22 ft. 1 in.

4. Amount and type of off street parking proposed: 52 standard parking stalls

5. How will drainage be accommodated? Flows collected by an existing onsite storm drain system from the existing adjacent Walmart store, which flows to existing detention basins.

6. Off-site construction (public or private) required to support this project: _____

None proposed

7. Preliminary grading plans estimate _____ cubic yards of cut and _____ cubic yards of fill

8. Description of project phasing if applicable: N/A

9. Permits or public agency approvals required for this project: The following departments: Planning, Health, Building, Fire, Hi-Desert Water District.

10. Is this project part of a larger project previously reviewed by the Town? If yes, identify the review process and associated project title(s) _____

Yucca Valley Retail Center - Wal-Mart Specific Plan

11. During construction, will the project: (Explain any "yes" or "maybe" responses to questions below – attach extra pages if necessary.)

Yes Maybe No

- A. Emit dust, ash, smoke, fumes or odors? DUST FROM GRADING ACTIVITIES
- B. Alter existing drainage patterns?
- C. Create a substantial demand for energy or water?
- D. Discharge water of poor quality?
- E. Increase noise levels on site or for adjoining areas? NOISE FROM GRADING EQUIPMENT
- F. Generate abnormally large amounts of solid waste or litter?
- G. Use, produce, store, or dispose of potentially hazardous materials such as toxic or radioactive substances, flammable or explosives?
- H. Require unusually high demands for such services as police, fire, sewer, schools, water, public recreation, etc.
- I. Displace any residential occupants?

Certification

I hereby certify that the information furnished above, and in the attached exhibits, is true and correct to the best of my knowledge and belief.

Signature: _____

Date: _____

12/12/2013

By: John E. Clarke Vice-President of Real Estate

Wal-Mart Stores, Inc.

Agreement to Pay All Development Application Fees

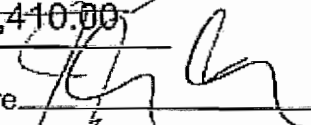
In accordance with Town Council Resolution 04-38 the Town collects certain fees based on the actual cost of providing service. The application deposit for this project (as indicated below) may not cover the total cost of processing this application. I/We are aware that if the account has 25% or less remaining prior to completion of the project, staff will notify the undersigned in writing, of the amount of additional deposit required to complete the processing of the application, based on Staff's reasonable estimate of the hours remaining to complete this application process.

Further, I understand that if I do not submit the required additional deposit to the Town within 15 business days from the date of notification by the Town, the Town will cease processing of the application and/ or not schedule the project for action by the Planning Commission or Town Council until the fees have been paid.

Any remaining deposit will be refunded to me at time of closeout after I have submitted any required approved project plans and forms, including signed conditions of approval, or upon my written request to withdraw the application.

As the applicant, I understand that I am responsible for the cost of processing this application and I agree that the actual costs incurred processing this application will be paid to the Town of Yucca Valley.

Deposit Paid: \$ ~~\$2,410.00~~ ^{\$2,440.00 (NE)}

Applicant's Signature  Date: 12/12/2013

Applicants Name John E. Clarke-Vice President of Real Estate, Wal-Mart Stores, Inc.
(Please print)

Owner/Applicant Authorization

Applicant/Representative: I/We have reviewed this completed application and the attached material. The information included with this application is true and correct to the best of my/our knowledge. I/We further understand that the Town may not approve the application as submitted, and may set conditions of approval. Further, I understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. Additional fees may be required depending on additional administrative costs

By: John E. Clarke, Vice President of Real Estate

Signed: 

Date: 12/12/2013

Property Owner: I/We certify that I/We are presently the legal owner(s) of the above described property (If the undersigned is different from the legal property owner, a letter of authorization must accompany the form). Further, I/We acknowledge the filing of this application and certify that all of the above information is true and accurate. I/We understand that I/We are responsible for ensuring compliance with conditions of approval. I hereby authorize the Town of Yucca Valley and or/its designated agent(s) to enter onto the subject property to confirm the location of existing conditions and proposed improvements including compliance with applicable Town Code Requirements. Further, I understand that all documents, maps, reports, etc., submitted with this application are deemed to be public records. This application does not guarantee approval or constitute a building permit application. Additional fees may be required depending on additional administrative costs. I am hereby authorizing

_____ to act as my agent and is further authorized to sign any and all documents on my behalf.

Signed: _____

Dated: _____

Developer Disclosure Statement

This portion of the Application must be fully completed and signed by the Applicant. If not fully completed and signed, the Application will be deemed incomplete.

Address of subject property: Por. of 58501 29 Palms Highway

Cross street: Avalone Avenue

Date this Disclosure Statement is completed: _____

Name of Applicant: Wal-Mart Stores, Inc.

The Applicant is a:

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name Wal-Mart Stores, Inc. Phone 479-273-4000 Fax _____

Mailing Address 2001 S.E. 10th Street Email J.Collier@wal-mart.com

City Bentonville State AR Zip 72716-0550

State of Registration Arkansas

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address (Same) Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

The Owner is a:

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name Wal-Mart Stores, Inc. Phone 479-273-4000 Fax _____

Mailing Address 2001 S.E. 10th Street Email J.Collier@wal-mart.com

City Bentonville State AR Zip 72716-0550

State of Registration Arkansas

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary _____

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

The Party in escrow is a (if property is in escrow):

- Limited Liability Company (LLC)
- Partnership
- Corporation
- None of the above

Information for LLC, Partnership, Corporation

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

State of Registration _____

Managing member(s), General Partner(s) officer(s)

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

Attach additional sheets if necessary

Agent for Service of Process

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For Corporations, Shareholder with Fifty Percent or More Share or Controlling Shareholder

Name _____ Phone _____ Fax _____

Mailing Address _____ Email _____

City _____ State _____ Zip _____

For any deeds of trust or other liens on the property (other than real property tax liens) please state the following:

- A. Name of beneficiary of the deed of trust or lien _____
- B. Date of the deed of trust or lien. _____

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date and location set forth below



Signature

Print Name: John E. Clarke

Title: Vice President of Real Estate

Date of signing: _____

Location: Bentonville, AR



HAZARDOUS WASTE SITE STATEMENT

I have been informed by the Town of Yucca Valley of my responsibilities, pursuant to California Government Code Section 65962.5, to notify the Town as to whether the site for which a development application has been submitted is located within an area which has been designated as the location of a hazardous waste site by the Office of Planning and Research, State of California (OPR).

I am informed and believe that the proposed site, for which a development application has been submitted, is not within any area specified in said Section 65962.5 as a hazardous waste site.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: 12/12/2013

John E. Clarke, VP of Real Estate Wal-Mart Stores, Inc.

Applicant/Representative printed name

Applicant/Representative signature

**TOWN OF YUCCA VALLEY
PLANNING COMMISSION MEETING MINUTES
MARCH 11, 2014**

Chair Humphreville called the regular meeting of the Yucca Valley Planning commission to order at 6:00p.m.

Commissioners present were Bridenstine, Drozd, Lavender, Whitten and Chair Humphreville.

Pledge of Allegiance was led by Chair Humphreville

APPROVAL OF AGENDA

Commissioner Bridenstine moved to approve the agenda. Commissioner Whitten seconded. Motion carried unanimously.

PUBLIC COMMENTS

None

PUBLIC HEARINGS

1. CONDITIONAL USE PERMIT, CUP 02-04 AMENDMENT #1PANDA EXPRESS-TACO BELL TENTATIVE PARCEL MAP, TPM 19525 ENVIRONMENTAL ASSESSMENT, EA 04-13 EIR STATE CLEARINGHOUSE #2004071127

Proposal to subdivide approximately 26 acres of commercially zoned property into three parcels of 0.84 acre, 0.75 acre and 23.88 acres and to construct a 2,230 square foot Panda Express and a 2,423 square foot Taco Bell. A total of 51 onsite parking spaces are proposed with drive aisles. The property is located at the south east corner of SR 62 and Avalon Avenue and is also described as Assessor Parcel Number 601-201-37.

The review and approval of the Yucca Valley Retail Specific Plan included a project Environmental Impact Report (EIR), State Clearinghouse #2004071127. The EIR evaluated future projects within the boundaries of the Yucca Valley Retail Specific Plan. The proposed project was evaluated to determine if additional CEQA documentation needed to be prepared. The proposed project will not have any effects not considered within the scope of the program EIR. The project is consistent with project EIR and will not create any additional impacts not previously considered. No additional environmental review is required.

Deputy Town Manager Stueckle gave a staff report and PowerPoint presentation outlining the project. The proposed project involves dividing a 26 acre lot into 3 parcels, two of which will be slightly less than one acre with the Super Wal-Mart retaining a 23.88 acre parcel, and the construction of a 2,230 sq ft Panda Express and a 2,423 sq ft Taco Bell with onsite parking allocated to each of the individual uses. It was the staff's finding that the project is included in the previously completed EIR for the Super Wal-Mart project. It will be attached to the existed Walmart package treatment plat, and the zoning is consistent with the Town's General Plan land use designations.

Deputy Town Manager Stueckle went on to explain that the site plan had be revised based on the discussions with staff. The site plan does not include any direct access to either Twentynine Palms Highway or Avalon Avenue. It does contain the two points of access mandated by the San Bernardino County Fire Department, but due to grade and other constraints, the driveways are located close together on the north side of the site. The revised site plan contains a separate exit for the drive-thru in response to staff's concerns about pedestrian access in the original site plan.

Deputy Town Manager Stueckle also spoke briefly about the proposed architecture. The building height at the top of the parapet for Panda Express is approximately 22ft, and 22ft at top of the tower element for Taco Bell. The one design concern expressed by staff is due to the fact that the trash enclosure is located farther from the buildings than is usual and is in a more visible location. Staff has asked that more additional decorative elements, such a wrought iron, be included than is typically seen around trash enclosures. The applicant also submitted a revised grading and drainage plan in line with the revised site plan.

Staff recommended that the Planning Commission finds the project exempt from further environmental review, and approves both the Conditional Use Permit, CUP 02-04, and the Tentative Parcel Map, TPM 19525, based upon the findings and Conditions of Approval.

Chairman Humphreville invited the representatives of the applicants to speak. Gary Wang of Gary Wang and Associates, the architect for Panda Express, and Charlie Shen from CFT Developments, LLC both offered to answer any of the Commission's questions.

Commissioner Bridenstine asked about the relative lack parking close to the entrance to the Panda Express in comparison to the parking near the Taco Bell. She also asked if there was information about what percentage of Panda Express customers use the drive-thru rather than the dining area.

Charlie Shen replied that the percentage of customers using the drive-thru is usually between 30-60% depending on location and other factors. He said that more detailed information can be provided. Gary Wang also stated that they will include pedestrian crossing hash marks to help protect customers crossing between the parking areas.

Commissioner Whitten commented that in his experience Panda Express tended to have fewer sit down customers than Taco Bell. He also asked about a stop sign at the end of the drive-thru, and speed limit signs.

Gary Wang replied that they were intending to include some kind of traffic control device such as stop signs or speed bumps.

Deputy Town Manager Stueckle stated that the Town does not typically regulated on site driving speeds limits. It is more typical to use stop signs and pedestrian cross walks to regulate on site traffic rather than speed limit signs.

Commissioner Whitten asked about some other options for positioning the drive-thru exit. Mr Wang and Mr. Shen explained that because of a combination of grading issues and issues with Wal-Mart the alternative positions of drive-thru weren't possible.

Commissioner Whitten also asked about the silting basin, and was informed by Mr. Wang that project will be tied into the existing lines.

Chairman Humphreville asked if the applicants intended to include the wrought iron decorative elements on the trash enclosure, and Commissioner Drozd asked what kind of wrought iron décor they intend to include.

Mr. Wang replied that they do intend to include the requested decorative elements, and the décor will fit the theme of the shopping center.

Commissioner Drozd asked for clarification on whether the Environmental Assessment was number EA 04-13 or 05-13. Deputy Town Manager Stueckle replied that the EA 04-13 number was a typo in the packet and EA 05-13 was the correct designation.

Commissioner Lavender asked if the landscaping was being designed with water conservation issues such as permeable surfaces in mind.

Mr. Wang replied that staff had informed them of these concerns and the landscaping is being designed with them in mind.

With no further question for the applicants from the Commission, Chairman Humphreville opened the floor to Public Comment

PUBLIC COMMENTS

Margo Sturges, Yucca Valley, expressed concerned over water usage and how that is being addressed. She wished to know if the Planning Commission has made sure that these issues are being addressed.

Deputy Town Manager Stueckle replied on behalf of staff that both projects are attached to the packaged treatment plant, and that no new facilities will be constructed.

With no further speakers, Chairman Humphreville closed public comments.

Commissioner Whitten moved to find the project exempt from further environmental review, and approve both the Conditional Use Permit, CUP 02-04, and the Tentative Parcel Map, TPM 19525, based upon the findings and Conditions of Approval. Chairman Humphreville seconded the motion. The motion carried unanimously.

2. DEVELOPMENT CODE UPDATE ARTICLE 3

Proposed amendment to Title 9, Yucca Valley Development Code adding Article 3, Chapter 9.30 thru Chapter 9.46, General Development Standards, providing standards for Dedications and Infrastructure Improvements, Landscaping, Parking, Performance Standards, Property Maintenance, Sign Regulations, Soil Erosion and Dust Control, Temporary Special Events, Temporary Uses, Surface Mining and Land Reclamation, Trip Reduction, Accessory Energy Systems, Wireless Communication Facilities, and Cemeteries and repealing Municipal Code Sections 41.151 thru 41.1569 and Development Code Sections 84.0701 thru 84.0740, 87.0201 thru 87.220, 87.0401 thru 87.0405, 87.0505, 87.0601 thru 87.0645, 87.0710 thru 87.07190, 87.0901 thru 87.0940, 88.0805 thru 88.0810, 810.0101 thru 810.0135, 810.0201 thru 810.0275, and 9.75.010 thru 9.75.130.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager
Alex Qishta, Project Engineer
Date: June 11, 2014
For Council Meeting: June 23, 2014
Subject: Town Wide Slurry Seal Project – Town Project No. 8340
Contract Amendment

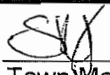
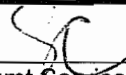
Prior Council Review: The Town Council awarded the construction contract to Pavement Coatings Company in the amount of \$370,700 on June 3, 2014 meeting. The Town Council approved the Plans and Specifications, and authorized project bidding at its meeting of April 1, 2014. The Town Council approved the Measure I 5 Year Plan on October 15, 2013.

Recommendation: That the Town Council approves a contract amendment per Section 1.10 of the original Contract between the Town of Yucca Valley and Pavement Coatings Company to add Joshua Lane from Joshua Drive to Yucca Trail, Cape Seal, to the scope of work in the amount of \$128,558.74; authorize the Town Attorney, Mayor and Town Manager to sign all necessary agreements.

Executive Summary: Project No. 8340 involves the application of a cape seal on designated streets throughout the Town of Yucca Valley specifically set forth in the Bid Documents and includes but not limited to mobilization, traffic control, removal of pavement striping, markings and legends, application of slurry and cape seal, and includes all appurtenant labor, materials and equipment.

- 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)

Discussion: The Town Wide Slurry Seal Project is an annual maintenance effort that is a part of the Town's overall pavement maintenance program.

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

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

to roads deteriorating to the degree where road reconstruction is necessary. The annual slurry seal project generally consists of applying a Type II Slurry Seal to the roadway, as well as replacement of obliterated traffic striping and damaged Raised Pavement Markers (RPM's).

Staff desire to add that portion of Joshua Lane from Joshua Drive to Yucca Trail (approximately 225,000 square feet) to avoid further deterioration to the Joshua Lane and prevent it from falling into a grind and overlay status.

Alternatives: Staff recommends no alternative action. Council can reject the additional work

Fiscal impact: The estimated project costs, as well as available funding in the adopted 2014-2015 Capital Projects Budget, are summarized below.

	<u>Estimated Project Cost</u>
Base Bid Amount	\$370,700.00
Construction Contingency	\$37,300.00
Contract Amendment	\$128,558.74
Contract Amendment Contingency	\$12,855.26
Total Contract Work	\$549,414.00
Fund 524 – Measure I Unrestricted	\$500,000.00
Fund 800 – Town wide infrastructure FY 13-14 Transfer	\$150,000.00
	\$650,000.00

Staff will value engineer components of the project to ensure project delivery below the adopted budget.

Attachments: Pavement Coatings Company Quote.
Map of Additional streets

**FIRST AMENDMENT TO CONTRACT SERVICES AGREEMENT FOR
CONSTRUCTION SERVICES BETWEEN THE TOWN OF YUCCA VALLEY
("TOWN") AND PAVEMENT COATINGS COMPANY ("CONTRACTOR")**

RECITALS

1. On June 3, 2014, TOWN and CONTRACTOR entered in an Agreement for Contract Services consisting of Construction of Town Project No. 8340; Town Wide Slurry Seal Project. CONTRACTOR compensation is \$370,700.00.
2. CONTRACTOR proposes Amendment No. 1, attached hereto as Exhibit "A", to the Agreement for Construction Services in the amount of \$128,558.74 to cover the cost of adding Joshua Lane from Joshua Drive to Yucca Trail (approximately 225,000 sf), bringing the total compensation to \$499,258.74.
3. Section 1.10 of the signed and approved Agreement "Additional Services" give TOWN the authority to order extra work without invalidating the Agreement
3. The total compensation to CONTRACTOR as a result Amendments No. 1 to the original Agreement for Professional Consulting Services shall be \$499,258.74.

That certain Contract Services Agreement for Construction Services between the TOWN and CONTRACTOR dated June 3, 2014 and attached herein is amended in the following respects only:

Section 2.1. Compensation. is hereby amended to read:

"Section 2.1. Compensation. Compensation to the CONSULTANT shall not exceed Four Hundred Ninety Nine Thousand, Two Hundred and Fifty Eight Dollars and Seventy Four Cents (\$499,258.74) for services including additional Contract Services described in CONTRACTOR'S Proposal dated June 3, 2014 and attached hereto as Exhibit "A".

Except as amended, all of the terms and conditions of the original Agreement are re-affirmed and incorporated as though fully set forth herein.

Dated: June 23, 2014

For the Contractor

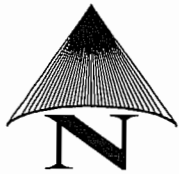
For the Town of Yucca Valley

Robert Matich
President

Shane Stueckle
Acting Town Manager

Approved as to Form

Lona N. Laymon
Town Attorney



NOT TO SCALE



Town of
YUCCA VALLEY
2014-15 SLURRY SEAL

Legend

Base Bid

- Joshua Dr. Church St. to Joshua Ln.
- Joshua Ln. San Marino Dr. to Joshua Dr.

Additional Work

- Joshua Ln. Joshua Dr. to Yucca Trail



Proposal and Contract
PAVEMENT COATINGS CO.

An Employee Owned Company

CA License# 303609 -- Type A and Type C32

10240 San Sevaire Way, Jurupa Valley, CA 91752
Phone: (714) 826-3011 FAX: (714) 826-3129

From: Van Duncan Email: tmucenski@pavementcoatings.com

To: Alex Qishta
Yucca Valley, Town of
58928 Business Center Drive ..
Yucca Valley, CA 92284

Quote No: 1137317
Fax No: N/A
Phone: 760-369-1265
Bid Date: 6/17/2014

We propose to furnish you with labor and material per your representation of job requirements as follows:
Joshua Ln (Joshua Dr to Yucca Trail)

Item No.	Description	Quantity	U/M	UnitPrice	Total Price
<u>Schedule 1</u>					
1	Traffic Control	1	LS	6,053.37	6,053.37
2	Cape Seal	222,138	SF	0.49	108,847.62
3	Pavement Marker, Markings, Legends, Striping	1	LS	13,657.75	13,657.75
Total Proposal Price:					\$128,558.74

TERMS & INSURANCE

Terms: Net 30 days. Insurance included in proposal: \$ 1,000,000 per occurrence / \$ 2,000,000 aggregate; \$ 2,000,000 products and operations aggregate; \$ 1,000,000 personal & advertisement injury; \$ 50,000 fire damage (any one fire)

Date:

Accepted by:

CONTRACT SERVICES AGREEMENT

By and Between

**THE TOWN OF YUCCA VALLEY,
A MUNICIPAL CORPORATION**

and

PAVEMENT COATINGS COMPANY

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE TOWN OF YUCCA VALLEY, CALIFORNIA
AND
PAVEMENT COATINGS COMPANY**

THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this 3th day of June, 2014 by and between the Town of Yucca Valley, a general law municipal corporation (“Town”) and Pavement Coatings Company, (“Consultant” or “Contractor”). Town and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”). (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. Town has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the Town to perform those services.

C. Pursuant to the Town of Yucca Valley’s Municipal Code, Town has authority to enter into this Contract Services Agreement and the Town Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the Town entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the Town and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless Town, its officers, employees or agents of Town, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against Town hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the Town of such fact and shall not proceed except at Town's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents,

plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by Town, except such losses or damages as may be caused by Town's own negligence.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the Town of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the Town in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the Town may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the Town, regardless of whether or not such warranties and guarantees have been transferred or assigned to the Town by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the Town. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the Town, the Town shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Town for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Town shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement

of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

Town shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the Town. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, Town agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **Three Hundred Seventy Thousand Seven Hundred Dollars**

and 0 Cents (\$370,700.00) (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the Town. Coordination of the performance of the work with Town is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to Town an original invoice for all work performed and expenses incurred during the preceding month in a form approved by Town's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

Town shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by Town, or as provided in Section 7.3. Town will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by Town, the original invoice shall be returned by Town to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the Town for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

Town may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. Town shall reject or finally accept Contractor's work within forth five (45) days after submitted to Town. Town shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. Town's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by Town shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Doug Ford</u> (Name)	<u>President</u> (Title)
<u>Van Duncan</u> (Name)	<u>Assistant Secretary/ Estimator</u> (Title)
<u>Tom Mucenski</u> (Name)	<u>Secretary/ Project Manager</u> (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for Town to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of Town. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify Town of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind Town in any manner or to incur any obligation, debt or liability of any kind on behalf of or against Town, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by Town. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of Town. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to Town's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the Town Manager of Town. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by Town to the Contract Officer. Unless otherwise specified herein, any approval of Town required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the Town Manager, to sign all documents on behalf of the Town required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the Town nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. Town shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of Town and shall remain at all times as to Town a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of Town. Town shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverage.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Town, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of Town:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the Town against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the Town submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the Town, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by Town or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the Town, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the Town. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the Town with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the Town. Town reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to Town.

All certificates shall name the Town as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

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Contractor Initials

Town, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Town, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by Town. At the option of Town, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Town or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to Town.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the Town, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or

entity for which Contractor is legally liable (“indemnors”), or arising from Contractor’s reckless or willful misconduct, or arising from Contractor’s indemnors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the Town, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the Town, its officers, agents, and employees harmless therefrom;

(c) In the event the Town, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the Town, its officers, agents or employees, any and all costs and expenses incurred by the Town, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify Town hereunder therefore, and failure of Town to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of Town’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from Town’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit “B”, Contractor shall deliver to Town performance bond in the sum of the amount of this Agreement, in the form provided by the Town Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the Town due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of Town ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the Town, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the Town Council of Town within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to Town and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of Town, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the Town shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to Town, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the Town is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of Town and shall be delivered to Town upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by Town of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the Town's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to Town of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify Town for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than Town without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the Town Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives Town notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then Town shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify Town should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. Town retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with Town and to provide Town with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by Town to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in San Bernardino.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the Town shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the Town may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the Town shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the Town may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the Town may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the Town to give notice of the Contractor's default shall not be deemed to result in a waiver of the Town's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes Town to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate Town for any losses, costs, liabilities, or damages suffered by Town, and (ii) all amounts for which Town may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, Town may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of

Town to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect Town as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by Town of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the Town the sum of **One Thousand Dollars and 0 Cents (\$1,000.00)** as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The Town may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The Town reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of

any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, Town may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the Town shall use reasonable efforts to mitigate such damages), and Town may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the Town as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. TOWN OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the Town or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of Town or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor

without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of Town in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against Town for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse Town for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by Town.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the Town, to the Town Manager and to the attention of the Contract Officer, TOWN OF YUCCA VALLEY, 57090 Twentynine Palms Highway, Yucca Valley, CA 92284 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the Town Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

TOWN:

TOWN OF YUCCA VALLEY, a municipal corporation

Town Manager

ATTEST:

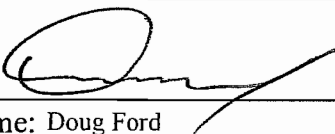
Town Clerk

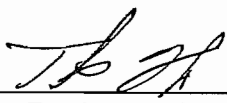
APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Lona Laymon, Town Attorney

CONTRACTOR:

Pavement Coatings Co.

By: 
Name: Doug Ford
Title: President

By: 
Name: Tom Mucenski
Title: Secretary

Address: 10240 San Sevaine Way
Jurupa Valley, CA 91752

Two signatures are required if a corporation.

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

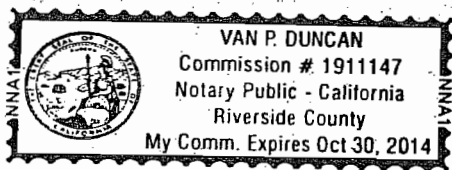
County of RIVERSIDE



On JUNE 13, 2014 before me, VAN P. DUNCAN, NOTARY PUBLIC,
 Date Name and Title of the Officer

personally appeared DOUG FORD, TOM MUCENSKI
 Name(s) of Signer(s)

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



Place Notary Seal Above

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

WITNESS my hand and official seal.

Signature: Van P. Duncan
 Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: AGREEMENT Document Date: 6-3-14

Number of Pages: 19 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

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

Signer Is Representing: _____

Signer Is Representing: _____

EXHIBIT "A"
SCOPE OF SERVICES

- I. Contractor will perform the following Services:**
- A. Traffic Control (as described in page SP-19 of the Specifications)
 - B. Cape Seal as described in page SP-20 of the Specifications)
 - C. Striping as described in page SP-22 of the Specifications)
 - D.
- II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the Town:**
- A. Traffic Control
 - B. Cape Seal
 - C. Striping
 - D.
- III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the Town apprised of the status of performance by delivering the following status reports:**
- A. Project Schedule
 - B.
 - C.
- IV. All work product is subject to review and acceptance by the Town, and must be revised by the Contractor without additional charge to the Town until found satisfactory and accepted by Town.**
- V. Contractor will utilize the following personnel to accomplish the Services:**
- A.
 - B.
 - C.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

EXHIBIT "C"
COMPENSATION

I. Contractor shall perform the following tasks:

		RATE	TIME	SUB-BUDGET
A.	Task A	<u>\$20,400.00</u>	<u>7/1/14 – 8/30/14</u>	_____
B.	Task B	<u>\$320,000.00</u>	<u>7/1/14 – 8/30/14</u>	_____
C.	Task C	<u>\$30,300.00</u>	<u>7/1/14 – 8/30/14</u>	_____
D.	Task D	_____	_____	_____
E.	Task E	_____	_____	_____

II. A retention of ten percent (5%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.

VI. The Town will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services shall not exceed \$370,700.00, as provided in Section 2.1 of this Agreement.

VI. The Contractor's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Contractor shall perform all services timely in accordance with the following schedule:

		<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Task A	<u>60 Working Day</u>	<u>7/1/14 – 8/30/14</u>
B.	Task B	<u>60 Working Day</u>	<u>7/1/14 – 8/30/14</u>
C.	Task C	<u>60 Working Day</u>	<u>7/1/14 – 8/30/14</u>
D.	Task D	_____	_____
E.	Task E	_____	_____

II. Contractor shall deliver the following tangible work products to the Town by the following dates.

A.	Traffic Control	8/30/14
B.	Cape Seal	8/30/14
C.	Striping	8/30/14
D.		
E.		

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Director of Administrative Services
 Jessica Rice, Administrative Assistant III
Date: June 19, 2014
For Council Meeting: June 23, 2014
Subject: Information Technology/Network Services – Award of Contract

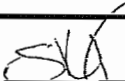

Prior Council Review: At the meeting of June 18, 2013, the Town Council authorized a one-year extension of the current contract with Southwest Networks, Inc, and directed staff to prepare and distribute a Request for Proposal (RFP) to review available options for related professional IT services for future terms.

Recommendation: That the Town Council reviews and approves the selection of Southwest Networks, Inc. to provide professional information technology/network maintenance and computer services for a one-year term with option to renew, and authorize the Mayor, Town Manager and Town Attorney to make any necessary non-substantive changes and sign all related documents in a form approved by the Town Attorney.

Order of Procedure:

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

Discussion: The Town of Yucca Valley has historically contracted out its Information Technology services as a cost effective alternative to performing the related tasks with in-house staff. In May 2014, staff completed an RFP process to provide professional network maintenance and computer services. To ensure adequate outreach, the RFP was posted on the Town’s website, published twice in the local newspaper, and sent to local and non-local firms by the Yucca Valley Chamber of Commerce. The Town received a total of five responses. Town staff evaluated each proposal in relation to the specifications identified in the RFP, including, but not limited to the following:

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

- Services and Support Provided
- Similar Work Experience in Similar Environment
- 24/7 Support with Minimal Response Time
- Cost of Service
- Innovative Approach to IT Management

Ongoing Concerns

As part of the RFP process, staff was hopeful to expand upon several innovative aspects from the various proposals that would be of benefit in addressing some of the long-term IT administrative and strategic concerns of Town staff. These concerns include some of the following areas:

- Long-term strategic planning for IT needs
- IT master plan development
- Predictable communication and update models
- Asset management planning
- Scheduled network analysis

Through the interview process, staff ensured that these concerns would be clearly identified and discussed. Further, staff communicated that there would remain an expectation that any contract recommendation would memorialize the approach to these concerns in the proposed scope of work.

Evaluation

Based on these and other factors, staff evaluated each of the five submitted proposals and scored the responses accordingly. The final rankings and average score of the submitted proposals were as follows:

Proposal	Average Score	Rank
Southwest Networks	93	1
Computer Gallery	83	2
Janity	76	3
CAM Business	69	4
Interbase	40	5

Four of the five submitted proposals met the majority of the Town's identified needs. As indicated in the chart below, Southwest Networks was the highest ranked firm based on experience with other local governmental agencies, overall cost, and the availability of staff for on-site technical work/emergency repairs.

Vendor Name	Annual Contract Cost	One Time Set-Up Fees	Hourly Rate for services outside of contract	Estimated Annual Costs (based on 200 billable hours)	Onsite Response Time?	Has Municipal Clients?
Southwest	\$49,860	\$0	\$80	\$65,860	<2 hours	Yes
Computer Gallery	\$88,800	\$7,400	\$125	\$121,200	<2 hours	No
Janity	\$87,188	\$9636	\$135	\$123,824	4.5 hours	No
CAM Business	\$60,000	\$0	\$75	\$75,000	Next Business Day	No

After thorough consideration, telephone interviews and reference conversations, staff recommends the award of contract to Southwest Networks based in part on these significant factors:

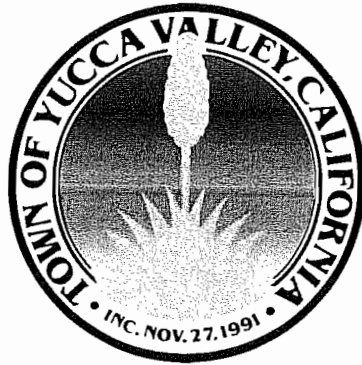
- Most responsive to RFP criteria.
- Local resources with immediate response time.
- Service levels will remain seamless.
- Budgetary concerns with the alternate service level approach.
- High level of positive references.
- Current knowledge of Town systems and legacy software.

The recommended action will award a one-year contract to Southwest Networks, with option to renew, in alignment with the Town's two-year fiscal budget.

Alternatives: Reject all proposals; select a different proposed firm.

Fiscal impact: The FY 2014-15 Adopted Budget provides \$83,000 in the Information Technology Division line item 001 05-08 7110 7410 Professional Services/Computer Maintenance for Network Support Services, and the FY 2015-16 Adopted Budget provides \$90,000 in the same budget category. The recommended action is accommodated by both the 2014-15 and 2015-16 budget.

Attachments: RFP
Draft Contract



REQUEST FOR PROPOSAL

PROFESSIONAL INFORMATION TECHNOLOGY SERVICES

RESPONSE DUE: MAY 29, 2014

TOWN OF YUCCA VALLEY
REQUEST FOR PROPOSAL
PROFESSIONAL INFORMATION TECHNOLOGY SERVICES

I. GENERAL INFORMATION

The Town of Yucca Valley is interested in contracting with an experienced professional information services company to provide the Town information technology management services in the area of network analysis and technical support, systems support, computer operations support, PC desktop technical support, software integration support, and IT policy procedure development, IT systems master planning efforts, and emerging technologies and accessories. The required services and performance conditions are described in Section V, Scope of Services.

II. BACKGROUND

The Town of Yucca Valley is organized according to the Town Council/Town Administrator form of government and is comprised of the following departments and divisions: Administration, Town Clerk, Administrative Services, Finance, Human Resources, Community Development, Planning, Code Compliance, Public Works/Engineering, Community Services, Recreation, Hi-Desert Nature Museum, Animal Care and Control, and Facilities Maintenance. Information technology activity is currently administered by the Administrative Services Department for long-term planning and coordination between departments.

The Town's entire IT staffing (client help desk support, desktop technician support, network administration, system administration, applications development, applications maintenance, database administration, and specific project development, implementation and support) is outsourced and must be available to the Town on a regular schedule as well as a 24/7 emergency basis.

The Town is interested in receiving responsive and competitive proposals from experienced and qualified Firms to provide information technology management services, specifically in the areas of desktop technical support, network analysis and administration, software support and computer operations. What follows is a description of the technical environment, contractor staffing, qualifications, and performance expectations.

III. INSTRUCTIONS TO APPLYING FIRMS

▪ **Examination of Proposal Documents**

By submitting a proposal, the prospective Firm represents that it has thoroughly examined and become familiar with the services required under this RFP, and that it is capable of delivering quality services to the Town in a creative, cost-effective and service-oriented manner.

▪ **Addenda/Clarifications (Request for Information)**

Please direct all Request for Information (RFI's) regarding the RFP to Jessica Rice, Administrative Assistant III, in writing, via email at jrice@yucca-valley.org. In the event of any additions, deletions, or changes, the Town will notify each Firm who has received a copy of the RFP and who has provided proper contact information. All communication shall be communicated in writing. All RFI's must be received no later than 3:00 p.m. on May 20, 2014.

▪ **Submission of Bid Proposals**

All bid proposals shall be submitted to:

Office of the Town Clerk
Town of Yucca Valley
57090 Twentynine Palms Hwy
Yucca Valley, CA 92284

Proposals must be delivered no later than 3:00 p.m. on May 29, 2014. All proposals received after that time will be returned to the Proposer unopened.

The prospective Firm shall submit one (1) original unbound, and three (3) bound copies of its bid proposal in a sealed envelope, addressed as noted above, bearing the Firm's name and address and clearly marked:

**“TOWN OF YUCCA VALLEY RFP
INFORMATION TECHNOLOGY MANAGEMENT SERVICES”**

It is the sole responsibility of the Firm to ensure that their bid proposal is delivered to the correct location on the correct date and time.

▪ **Withdrawal of Proposals**

A Firm may withdraw its proposal at any time before the expiration date for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the prospective Firm.

▪ **Rights of Town of Yucca Valley**

This RFP does not commit the Town to enter into a Contract, nor does it obligate the Town to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

The Town reserves the right to:

- Make the selection based on its sole discretion
- Reject any and all proposals without prejudice
- Issue subsequent Requests for Proposal
- Remedy technical errors in the Request of Proposal process
- Approve or disapprove the use of particular sub-contracts
- Negotiate with any, all, or none of the prospective Firms
- Solicit best and final offers from all or some of the prospective Firms
- Accept other than the lowest offer
- Waive informalities and irregularities in the proposal process

▪ **Tentative Schedule for Selection**

RFP Released:	April 30, 2014
RFP Advertised:	May 7, 2014 & May 14, 2014
Deadline for Requests for Information	May 20, 2014, 3 PM
Deadline for submittal of Proposal	May 29, 2014, 3 PM
Interviews if necessary (Date to be determined)	May, 2014
Agreement Presented to Council for Review & Approval	June 17, 2014

▪ **Contract Type**

It is anticipated that the Town's standard agreement contract will be signed subsequent to Town Council review and approval of the selected Firm. The terms and conditions of the contract with the Firm selected will require the Firm to maintain general liability, automobile, worker's compensation and errors and omissions insurance. The contract will also contain provisions requiring the selected Firm to indemnify the Town and will include provisions allowing the Town to terminate the agreement, at its sole and entire discretion, upon the provision of notice. The Town's standard professional service agreement is attached as Appendix A to this request for proposal.

▪ **Proposed Term of Contract**

The proposed term of the contract is for one year, with option to extend annually at the Town's discretion.

▪ **Collusion**

By submitting a proposal, each prospective Firm represents and warrants that; its proposal is genuine and not a sham or collusive or made in the interest of, or on behalf of, any person not named therein; that the prospective Firm has not directly, induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the prospective Firm has not in any

manner sought collusion to secure any improper advantage over any other person submitting a proposal.

▪ **Undue Influence**

Firm declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the Town in connection with the award or terms of the Agreement that will be executed as a result of award of this RFP, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Town will receive compensation, directly or indirectly, from Firm, or from any officer, employee or agent of Firm, in connection with the award of the Agreement or any work to be conducted as a result of the Agreement. Violation of this Section shall be a material breach of the Agreement entitling the Town to any and all remedies at law or in equity.

IV. CURRENT TECHNICAL ENVIRONMENT

The Town has three major work centers. The Town Hall complex includes four separate buildings: Town Hall, Community Center, Hi Desert Nature Museum, and Public Safety. Other work centers include Community Development/Public Works and the YV Animal Shelter. The Town has an internetwork that connects these work centers through Ethernet and point-to-point 3mb Bonded T1 connections. Each facility is segmented into a smaller subnet via Cisco 1900 series routers. Town Hall has a central server room housing 3 servers and a BDR with the Town's central network switches and routers. Community Development/Public Works has its own server room with 1 Server, Router and switches. The Animal Shelter has 2 Servers, network switches and router in a server room at the facility. Wireless access capabilities at all Town facilities are provided by Cisco access points.

▪ **TYPICAL HARDWARE**

○ **SERVERS**

- 3 Windows 2008 R2 Servers (Domain Controller, Application, and Exchange) at Town Hall.
- 1 Windows 2003 Storage Server (Backup Disaster Recovery) at Town Hall.
- 1 Windows 2008 R2 Server (Community Development/Public Works Domain Controller/File Server).
- 2 Windows 2008 R2 Servers (Animal Shelter) Domain Controller, Terminal Server.

- PCs
 - Approximately 37 Desktop PC's, 13 Laptops and 24 Thin Clients
 - Majority of workstations are running Windows 7. Currently six are running on Windows XP.
 - All workstations are attached to the Town network and members of Active Directory domain.
- OTHER PERIPHERALS
 - Variety of networked printers, which are primarily HP Laserjets or Kyocera laser printers.
 - Several networked scanners for Laser Fiche, documentation archival, etc.
 - RF based network receiver/transmitters for irrigation controllers and digital signage.
 - Network enabled alarm panels, monitors, and controllers for security and keyless entry systems.
 - Credit card scanners and PC attached cash drawers for POS systems.
 - Variety of smart phones connected to Exchange including android based, iPhones, and Windows Mobile based HTC's.
 - Several large multi-function copier/printers throughout the Town's facilities with network scanning/printing capabilities.
 - Variety of miscellaneous office devices including digital cameras, voice recorders, PDA's, badge printers, and analog modems for interfacing with analog equipment.
- **TYPICAL SOFTWARE**
 - DESKTOP STANDARD SOFTWARE
 - Microsoft Office 2003/2010/2013 Std/Pro (Word, Excel, PowerPoint, Outlook, etc.)
 - Microsoft Internet Explorer
 - Adobe Acrobat Professional
 - Other specialized software packages installed on various work stations including, but not limited to: AutoCAD, Laser Fiche, Fundware, Print Artist, Max Enterprise, Adobe Creative Suite, HDL Business License, HDL Animal Licensing, VTRetail, Regit POS, Micro Paver, Smart Draw, and several miscellaneous web applications hosted by third party vendors.
 - SERVER HOST SOFTWARE
 - Fundware (accounting)
 - Max Enterprise (recreation)
 - Laser Fiche (record keeping)
 - Microsoft SQL
 - Microsoft Exchange

▪ **NETWORK CONFIGURATION**

- The Town connects all of its staffed facility locations (both remote locations and Town Hall) together in an active configuration.
- The switches used in the Town's network are SNMP capable Netgear and HP switches.
- Most workstations are wired directly to the switches via CAT5e wiring.
- Network security is provided by a Cisco ASA Firewall.
- Town e-mail is controlled via Microsoft Exchange 2010 and filtered through current providers Cloud SPAM/AV Protection.
- Workstation security/authentication is controlled by Active Directory.
- The Town currently receives employee internet access via a Time Warner 50/5 Coax Internet connection with 3mb Bonded T1's connecting Community Development and the Animal Shelter.

V. SCOPE OF SERVICES

▪ **TOWN TO PROVIDE**

1. The Town will provide training in regard to the Town's office, procurement, policies, and behavior standards.
2. The Town is responsible for the cost of purchasing new equipment and planned replacements. The Firm is responsible to provide technical assistance and coordination for all purchases.

▪ **FIRM TO PROVIDE**

1. The Firm should provide adequate backup staffing resources to address major and immediate problems, staffing irregularities, and planned significant upgrades. The Firm should have advanced level technical resources, or consultants available to guide and support the on-site technicians and relevant Town staff when complex and significant problems arise. The firm shall provide resources to perform expectations as further outlined in the minimum performance section.

PERFORMANCE EXPECTATIONS

The Firm – General

The Firm is expected:

- To provide timely, professional and effective services, work harmoniously with Town staff and other Town contractors, conduct regular status and information meetings, provide regular and timely reports on outstanding issues, work accomplished, and general network health, and make recommendations on improving Town processes.
- Accomplish services either remotely or onsite, as deemed necessary by the Town. The actual schedule of hours would be negotiated with the successful Firm.

- To provide enforcement of all Town policies relating to the use of information technology resources.

Desktop Support

Desktop Support Technicians are expected to resolve client/caller generated trouble calls in a professional and efficient manner. Additionally they will work on special project/task assignments as necessary: to setup and configure new PCs, laptops, PDA's, printers; to maintain current version levels of desktop software; to install, upgrade or troubleshoot software; to conduct hardware and software inventories; to do minor hardware installations and modifications on existing PCs and other related tasks.

- Desktop Support Technicians will provide desktop support for all problems and project calls to diagnose, upgrade, install, fix, adjust, and general problem resolution during the hours of 7:30 a.m. and 5:30 p.m. Monday through Friday.
- Call-out support shall be available on a 24/7 basis with no more than a two-hour response time on declared emergency situations.
- On-call support shall be available on a 24/7 basis for technical support at all times.
- Remote help desk support for OS, application support, network and email problems.
- Desktop Support Technicians will respond (call acknowledging assignment of call) to Client/Caller, resolution/diagnosis according to prioritization.
- Client/Caller will be apprised of problem status during the entire problem resolution cycle in a timely manner.
- Desktop Support Technicians will give Client opportunity to test system while they are present if at all possible. For long-term problems, Client to be notified weekly of progress until resolved/closed.
- Desktop Support Technicians will document all actions taken on each call into a log/tracking system before they leave for the day, on the day that the activity took place whether the call is complete or not.
- Online tracking system of services requests that can be accessed by Town Staff.
- The Firm's staff is expected to provide their own transportation between Town sites during their support activities.

Computer Operations

The Town's servers are expected to function 24 hours per day with very minimal unplanned service interruptions occurring between 7:30 a.m. and 5:30 p.m. Execution of scheduled batch runs and process:

- Review of all process logs for normal execution and performance.
- Preparation of reports and outputs for distribution on next regular work day.
- Review of security logs for unusual activity.
- Perform backups, backup rotations and restores of all systems, services, and network equipment.
- Maintain filing organizing, storing, status reporting on all operation and network activity records and reports.

- Monitor and report status of servers (disk allocations, etc.)
- Monitor and report on status of network.
- Log activity event entries into Operations Activity Log.
- Clean and organize Computer Server Room as needed.
- Check on versions of software that require updates.
- Maintain process and operational documentation for Operations and Network Groups.
- Assist in the maintenance of records on Hardware assets: PCs, Servers, Network equipment, etc., Acquisition date, Warranty date, maintenance agreement location, maintenance and repair contact number.
- Assist in the maintenance of records on software assets: PCs, Servers, Databases, Applications, OS, etc.
- Work in cooperation with designated emergency preparedness staff in order to prepare and maintain an Emergency Communications Plan.

Network and Systems Support

The Network and Systems Support function is expected to provide all the necessary network and system technical expertise to the Town to have its systems and network operate efficiently and effectively, and they are expected to work after hours, weekends and holidays as necessary to resolve problems, do updates, and perform testing so as not to impact normal production activities of the Town. The Network and Systems Support activities are expected to be the standard activities for a similar-sized municipal IT operation. They are generally described as follows:

- Network is defined to include all Town switches, hubs, routers, bridges, repeaters, firewalls, servers.
- Maintenance and installation of cabling for the entire Town system is the responsibility of the Firm.
- Development and safe keeping of a master cabling map/listing throughout the Town is the responsibility of the Firm and shall remain the property of the Town.
- Network and network device performance monitoring, diagnostics, and tuning.
- Network and network device configuration and version updates to keep within two versions of current, or as directed by Town.
- Network and network device configuration management and record keeping.
- Network, network device and server capacity monitoring and planning.
- Network, network device and systems security administration and record keeping consistent with Town policies.
- Firewall monitoring for intrusion attempts, attacks, viruses, etc.
- Firewall configuration and version updates.
- Server OS configuration and version updates.
- Network intrusion and Virus software management
- Coordination and cooperation with other Town service providers.
- As the Town performs updates on its web presence, the Firm will provide basic technical support in order to maintain current information.
- Cloud based Spam/AV (currently provided).
- Develop recommendation for currently leased Backup Disaster Recovery (BDR) at Town Hall.

VI. FIRM QUALIFICATIONS

- The Town requires proposals submitted by primary Firms only. Firms will have complete and exclusive responsibility for satisfying all Town conditions and requirements at all times during the life of the agreement.
- Firm agrees to enter into the Town's standard professional services agreement, attached as Appendix A
- Firm must have experience in providing similar work, preferably in similar municipal organizations.
- The Firm is expected to have an effective communication rapport with the Town providing valuable, accurate information in a timely manner.
- Close cooperation and productive working relationships between all parties are essential to the Town. If there are irresolvable difficulties in the relationships between parties that impact service delivery to the Town, the contract may be terminated pursuant to the provisions contained in the Town's standard professional services agreement

VII. METHOD OF SELECTION AND NOTICES

A Town review team will be used to evaluate proposals. The criteria used for evaluation will be the Proposer's:

- Experience
- Completeness and Comprehensiveness
- Responsiveness to Town's issues
- Potential to benefit the Town of Yucca Valley with an innovative approach
- Cost effectiveness
- Quality of proposed staff

INFORMATION TO BE SUBMITTED

The proposal is limited to the following pages of directly pertinent material, originally produced for this proposal. Items not specifically and explicitly related to the RFP and proposal, e.g. brochures, marketing material, etc. will not be considered.

- Include a Section 1 with a *Proposal Summary*

This section shall discuss the highlights, key features, and distinguishing points of the Proposal. A separate sheet shall include contact information for the responding personnel and how to communicate with them (Appendix B).

- Include a Section 2 on *Qualifications of the Firm*

This section shall include a brief description of the Firm's qualifications and previous experience on similar or related projects. Provide a description of pertinent project experience with an emphasis on other public municipalities and private sector that includes a summary of the work performed, the total project cost, and the percentage of work the Firm was responsible for, the period over which the work was completed, and the name, title, and phone number of clients to be contacted for references.

- Include a Section 3 on *Work Plan*

In this section, present a well-conceived service plan. This section of the proposal shall establish the Firms' understanding of the Town's objectives and work requirements and the Firm's ability to satisfy those objectives and requirements. Describe the proposed approach for addressing the required service, outlining the approach that would be undertaken in providing the requested services. Include a timetable for transition to full operation.

- Include a Section 4 on *Proposed Innovations*

The firm may also suggest technical or procedural innovations that have been used successfully in other engagements and that may provide the Town with better service delivery. In this section, discuss any ideas, innovative approaches, or specific new concepts included in the Proposal that would provide benefit to the Town's assessment of the Proposal.

- Include a Section 5 on *Project Staffing*

In this section, discuss how the Firm would propose to staff this project. Firm's key project team members shall be identified by name, specific responsibilities on the project and their qualifications. An organizational chart for the project team and resumes for key Firm's personnel shall be included. Key Firm personnel will be an important factor considered by the Review Team or Committee. There can be no change of key personnel once the proposal is submitted, without prior approval of the Town.

- Include a Section 6 on *Proposal Costs Sheet and Rates*

In this section, include a detailed cost proposal to provide the services desired. The proposal must contain fixed service level costs and an all-inclusive hourly rate for the proposed services as appropriate. Any work outside of the scope of the contract will be negotiated on a case by case basis.

ATTACHMENTS INCLUDE:

- Appendix A – Sample Professional Services Agreement
- Appendix B – Firm Contact Summary Sheet

CONTRACT SERVICES AGREEMENT

By and Between

**THE TOWN OF YUCCA VALLEY,
A MUNICIPAL CORPORATION**

and

SOUTHWEST NETWORKS, INC.

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE TOWN OF YUCCA VALLEY, CALIFORNIA
AND
SOUTHWEST NETWORKS, INC.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 1st day of July, 2014 by and between the **Town of Yucca Valley**, a general law municipal corporation ("Town") and **Southwest Networks, Inc.**, ("Consultant" or "Contractor"). Town and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties". (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. Town has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the Town to perform those services.

C. Pursuant to the Town of Yucca Valley's Municipal Code, Town has authority to enter into this Contract Services Agreement and the Town Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the Town entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities

necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the Town and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless Town, its officers, employees or agents of Town, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against Town hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the Town of such fact and shall not proceed except at Town's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by Town, except such losses or damages as may be caused by Town's own negligence.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the Town of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the Town in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the Town may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the Town, regardless of whether or not such warranties and guarantees have been transferred or assigned to the Town by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the Town. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the Town, the Town shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Town for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the

performance of other requirements on “Public Works” and “Maintenance” projects. If the Services are being performed as part of an applicable “Public Works” or “Maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Town shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor’s principal place of business and at the project site. Contractor shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

Town shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the Town. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit “B” and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit “B” and any other provisions of this Agreement, the provisions of Exhibit “B” shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, Town agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$68,000 (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the Town. Coordination of the performance of the work with Town is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to Town an original invoice for all work performed and expenses incurred during the preceding month in a form approved by Town's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

Town shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by Town, or as provided in Section 7.3. Town will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by Town, the original invoice shall be returned by Town to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the Town for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

Town may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. Town shall reject or finally accept Contractor's work within forth five (45) days after submitted to Town. Town shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. Town's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by Town shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Matt Disher</u> (Name)	<u>President</u> (Title)
<u>Christopher Blosser</u> (Name)	<u>Vice President - Operations</u> (Title)
_____ (Name)	_____ (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for Town to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of Town. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify Town of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind Town in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against Town, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by Town. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner

officials, officers, employees or agents of Town. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to Town's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the Town Manager of Town. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by Town to the Contract Officer. Unless otherwise specified herein, any approval of Town required hereunder shall mean the approval of the Contract Officer.

The Contract Officer shall have authority, if specified in writing by the Town Manager, to sign all documents on behalf of the Town required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the Town nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. Town shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of Town and shall remain at all times as to Town a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of Town. Town shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverage.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to Town, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of Town:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the Town against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the Town submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the Town, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by Town or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the Town, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30)

days prior written notice by certified mail return receipt requested to the Town. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the Town with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the Town. Town reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to Town.

All certificates shall name the Town as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Contractor Initials

Town, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Town, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by Town. At the option of Town, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Town or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to Town.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the Town, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (“indemnors”), or arising from Contractor’s reckless or willful misconduct, or arising from Contractor’s indemnors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the Town, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the Town, its officers, agents, and employees harmless therefrom;

(c) In the event the Town, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the Town, its officers, agents or employees, any and all costs and expenses incurred by the Town, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify Town hereunder therefore, and failure of Town to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of Town’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from Town’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to Town performance bond in the sum of the amount of this Agreement, in the form provided by the Town Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the Town due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of Town ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the Town, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the Town Council of Town within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to Town and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of Town, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the Town shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to Town, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the Town is greatly concerned about the cost

of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of Town and shall be delivered to Town upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by Town of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the Town's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to Town of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify Town for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than Town without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the Town Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives Town notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then Town shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify Town should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other

discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. Town retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with Town and to provide Town with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by Town to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in San Bernardino.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the Town shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the Town may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the Town shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the Town may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the Town may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the Town to give notice of the Contractor's default shall not be deemed to result in a waiver of the Town's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes Town to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate Town for any losses, costs, liabilities, or damages suffered by Town, and (ii) all amounts for which Town may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, Town may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of Town to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect Town as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by Town of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the Town the sum of N/A (\$ N/A) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The Town may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The Town reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has

initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, Town may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the Town shall use reasonable efforts to mitigate such damages), and Town may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the Town as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. TOWN OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the Town or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of Town or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times

avoid conflicts of interest or the appearance of any conflicts of interest with the interests of Town in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, age, sexual orientation, marital status, national origin, veteran status, disability, medical conditions, military service, genetic testing, ancestry, or any other classification protected by state and local laws and ordinances.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against Town for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse Town for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by Town.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the Town, to the Town Manager and to the attention of the Contract Officer, TOWN OF YUCCA VALLEY, 57090 Twentynine Palms Highway, Yucca Valley, CA 92284 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the Town Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

TOWN:

TOWN OF YUCCA VALLEY, a municipal corporation

Town Manager

ATTEST:

Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Lona Laymon, Town Attorney

CONTRACTOR:

By: _____

Name:

Title:

By: _____

Name:

Title:

Address: _____

Two signatures are required if a corporation.

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER
- _____
- TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____
- _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

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- OTHER _____
- _____

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Contractor will perform the following Services:

A. Provide professional information technology managed services including, but not limited to: network monitoring and management, computer operations, and desktop support, assisting Town with IT project management and engineering services as needed. Annual contract cost also includes a 3TB BDR (Backup Disaster Recovery) Service and 2TB offsite storage, as detailed below:

Service Specifications for 3TB BDR (Backup Disaster Recovery) Service:

1. Provided Services:
 - a) (1) 3TB Guardian BDR Appliance
 - b) Backup Monitoring and Management
 - c) Restoration of Folders/Files
 - d) Local Virtualization of Servers in case of failure
2. Appliance Ownership:

The 3TB Guardian BDR Appliance is the sole property of Southwest Networks, Inc.
3. Costs:

The cost of the Managed 3TB BDR is included in the annual managed services contract cost of \$49,860.

Service Specifications for 2TB Offsite Storage:

1. Provided Services:
 - a) 2TB of BDR Offsite storage in Bi-Coastal Data Centers
 - b) Manufacturer Warranty and Tech Support
 - c) Unlimited Agent Licenses (Limited only by local storage limits)
 - d) Cloud Virtualization for Servers in case of failure (30-days of Cloud Virtualization per server / per year. Fees apply for every hour over.
 - e) Device Seeding
 - f) Granular Recovery for Exchange
2. Costs:

2TB of offsite storage is included in the annual managed services contract. Each TB over the included 2TB will be charged at \$180 per TB, per month. (Example: If 2.1TB is used, an additional \$180 per month will be billed; if 3.1TB is used, an additional \$360 per month will be billed; etc.)

B. Perform tasks not included in the annual managed services contract rate at a project hourly rate of \$80 per hour. Any such tasks must be authorized via email or written confirmation and authorization.

C. Scheduled after hours support will be billed at the hourly rate of \$80 per hour.

D. Emergency services performed outside of the hours of 8:00 am – 5:00 pm, Monday through Friday, excluding public holidays, shall be subject to a charge of \$200 per hour, unless previously scheduled during such times, as indicated in I-C above. Any such tasks must be authorized via email or written confirmation and authorization.

II. As part of the Services, Contractor, with necessary assistance from Town, will prepare and deliver the following tangible work products to the Town:

A. Asset Management Report, including:

- Current User
- Detailed hardware specs (RAM, Drive Space, CPU, etc.)
- System specs, including age and warranty status of equipment
- Installed software
- Licensing summary, including expiration dates

III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the Town apprised of the status of performance by delivering the following status reports:

A. Weekly summary status report of all open trouble tickets shall be emailed to the Contract Officer.

B. Scheduled reviews as determined by Contract Officer to provide:

- An extensive analysis of the network's trends, security and performance.
- Recommendations for improving network performance and office productivity to assist with IT planning (near, mid, and long-range planning) and budgeting purposes.

IV. All work product is subject to review and acceptance by the Town, and must be revised by the Contractor without additional charge to the Town until found satisfactory and accepted by Town.

V. Contractor will utilize the following personnel to accomplish the Services:

A. To Be Determined.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Article 5 “Insurance, Indemnification and Bonds”, Section 5.1 (d) “Professional Liability” the following sentence shall be added to the end of the paragraph: “If professional errors and omissions liability insurance is not reasonably available, Contractor shall inform Town and request written waiver of this requirement, but failure to grant such waiver shall not void the contract”.

EXHIBIT "C"
COMPENSATION

I. Contractor shall perform the following tasks:

		RATE	TIME	SUB-BUDGET
A.	Managed Services	<u>\$49,860.00</u>	<u>Annually</u>	<u>N/A</u>
B.	Hourly Rate	<u>\$80.00</u>	<u>Hourly</u>	<u>N/A</u>
C.	Scheduled, After Hours Support	<u>\$80.00</u>	<u>Hourly</u>	<u>N/A</u>
D.	Emergency, After Hours Support	<u>\$200.00</u>	<u>Hourly</u>	<u>N/A</u>

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services. – NOT APPLICABLE

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10. – NOT APPLICABLE

VI. The Town will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

- V. **The total compensation for the Services shall not exceed \$68,000, as provided in Section 2.1 of this Agreement.**
- VI. **The Contractor's billing rates for all personnel are attached as Exhibit C-1. – NOT APPLICABLE**

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Contractor shall perform all services timely in accordance with the following schedule:

		<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Professional Services	<u>365</u>	<u>6/30/2015</u>

II. Contractor shall deliver the following tangible work products to the Town by the following dates.

A. NOT APPLICABLE

III. Upon approval of the Town Council and Contractor, this contract may be renewed for a period of one (1) additional year, extending the term through June 30, 2016.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Director of Administrative Services
Date: June 19, 2014
For Council Meeting: June 23, 2014

Subject: Community Development Block Grant (CDBG) Amended and Restated Cooperation Agreement and Delegate Agency Agreement

Prior Council Review: The Town Council has authorized participation in consecutive three-year Cooperation Agreements and corresponding Delegate Agency Agreements with San Bernardino County for the administration of the Town's CDBG program. The most recent review was in April 2014.

Recommendation: Approve the Amended and Restated Community Development Block Grant Cooperation Agreement and the City-County Delegate Agency Agreement with San Bernardino County for fiscal years 2015-16, 2016-17, and 2017-18 and subsequently automatically renew unless terminated, and authorize the mayor to execute the agreement.

Summary: Since incorporation, the Town of Yucca Valley has participated as a cooperating city with the County of San Bernardino in the local administration of the Community Development Block Grant program. The Cooperation Agreement and Delegate Agency Agreement provide the framework for continuing this working relationship through June, 2018 and beyond.

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)

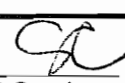
Discussion:

The Community Development Block Grant program is a federally funded grant program designed to provide projects and programs that primarily benefit to low-to-moderate income residents. CDBG funding can also be used for certain economic development programs and projects. Each year since incorporation, the Town of Yucca Valley has received an allocation of CDBG funds through a cooperation agreement between the

Reviewed By:


Town Manager

Town Attorney


Mgmt Services

Dept Head

Department Report
 Consent

Ordinance Action
 Minute Action

Resolution Action
 Receive and File

Public Hearing
 Study Session

Town of Yucca Valley and the County of San Bernardino. As a cooperating city, the Town receives a consistent annual CDBG allocation and has the ability to directly implement CDBG funded activities. The alternative course of action would be to decline participation with the county, and apply directly to the State as a small city CDBG participant. In this structure, the Town becomes responsible for all administration, application and reporting functions of the CDBG program.

A change in the HUD administrative process, this proposed agreement includes newly enacted statutory regulations required to be included in all Cooperation Agreements effective immediately. Changes include the addition of two new paragraphs in Section 5. Compliance with Legislation and Regulations.

"The CITY and COUNTY agree to cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities."

"A unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receive CDBG funds in exchange for any other funds, credits or non-Federal consideration, but must use such funds for activities eligible under ACT, as amended."

Staff recommends approval of the Amended and Restated Cooperation Agreement and Delegate Agency Agreement through June 30, 2018, with automatic subsequent renewal unless terminated.

Alternatives: None recommended.

Fiscal impact: The Town's annual CDBG allocation has been in the \$100,000 to \$130,000 range during the past three year cycle.

Attachments: Letter from San Bernardino County
Copy of Cooperating City Agreement and Delegate Agency Agreement

From: Anderson, Bryan [banderson@cd.sbcounty.gov]
Sent: Wednesday, June 11, 2014 12:32 PM
To: Curtis Yakimow
Cc: Ramirez, Tom
Subject: Cooperation Agreement

HUD has recently notified the County of San Bernardino of newly enacted statutory regulations that must be included in all Cooperation Agreements effective immediately. To meet these new requirements, please find attached a **Amended and Restated Cooperation Agreement** that incorporates language that is now required in all Cooperation Agreements.

The only change to the previously approved Cooperation Agreement is the addition of two new paragraphs to the bottom of **SECTION 5, COMPLIANCE WITH LEGISLATION AND REGULATIONS**

"The CITY and COUNTY agree to cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities."

"A unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receive CDBG funds in exchange for any other funds, credits or non-Federal consideration, but must use such funds for activities eligible under ACT, as amended."

Please print four (4) copies of the attached Amended and Restated Cooperation Agreement/Delegate Agency Agreement for your City Council's approval and signature by your City's chief executive officer and attorney.

Time is of the essence in order to meet the HUD's deadline for submittal of a Cooperation Agreement, please submit to our office by July 16, 2014.

Please call me if you have any questions about the Amended and Restated Cooperation Agreements.

Thank you,

Bryan Anderson
Supervising CDH Analyst
Community Development Division
Economic Development Agency
County of San Bernardino
385 N Arrowhead Ave., Third Floor
San Bernardino, CA 92415-0043
909 387-4351



County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input type="checkbox"/> New	FAS Vendor Code		SC	Dept.	A	Contract Number	
<input checked="" type="checkbox"/> Change							
<input type="checkbox"/> Cancel							
ePro Vendor Number					ePro Contract Number		
County Department			Dept.	Orgn.	Contractor's License No.		
Community Development and Housing			ECD	ECD			
County Department Contract Representative				Telephone		Total Contract Amount	
Dena Fuentes, Director				(909)387-4411			
<input type="checkbox"/> Revenue		<input type="checkbox"/> Encumbered		<input type="checkbox"/> Unencumbered		<input checked="" type="checkbox"/> Other:	
If not encumbered or revenue contract type, provide reason:							
Commodity Code		Contract Start Date		Contract End Date		Original Amount	Amendment Amount
		July 1, 2015		June 30, 2018		N/A	N/A
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount	
SBA	ECD	ECD	200	2005		\$	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
						\$	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
						\$	
Project Name			Estimated Payment Total by Fiscal Year				
FY 2015-18			FY	Amount	I/D	FY	Amount
City-County Cooperation							
Agreement							

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

Name

Town of Yucca Valley

hereinafter called _____

Address

57090 Twentynine Palms Hwy

Yucca Valley, CA 92284

Telephone

(760) 369 - 7207

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

The attached Amended and Restated Cooperation Agreement is required by the U.S. Department of Housing and Urban Development (HUD) in order to include the Town of Yucca Valley as a participant in the County's Community Development Block Grant (CDBG), HOME Investment Partnership, Emergency Solutions Grant (ESG) and other HUD grant(s) programs. It allows the City's population statistics to be included by HUD to calculate the County's grant(s) amount for each year starting in fiscal year 2015-2016 to 2017-18 and will automatically renew every three years thereafter unless revoked by either party, for so long as the County is designated as an Urban County.

The attached Contract consists of eight pages and two exhibits.

**AMENDED AND RESTATED COOPERATION AGREEMENT FOR
HOUSING AND URBAN DEVELOPMENT COMMUNITY DEVELOPMENT AND PLANNING GRANTS
FOR FISCAL YEARS 2015-16, 2016-17, 2017-18 AND SUBSEQUENT AUTOMATIC RENEWALS, UNLESS
TERMINATED**

This Amended and Restated Agreement is made and entered into this ____ day of _____, 2014, by and between the County of San Bernardino, of the State of California, hereinafter referred to as "COUNTY", and the Town of Yucca Valley, a City within COUNTY, hereinafter referred to as "CITY".

WHEREAS, U.S. Department of Housing and Urban Development, hereinafter called HUD, provides Community Development Block Grant, Catalog of Federal Domestic Assistance (CFDA) #14.218, HOME Investment Partnership, CFDA #14.239, and Emergency Solutions Grants, CFDA #14.231, funds and other grants directly to qualified Metropolitan Cities, and Urban Counties via their Community Planning and Development (CPD) Division; and

WHEREAS, the Housing and Community Development Act of 1974, as amended (Public Law 93-383), hereinafter referred to as ACT, provides that Community Development Block Grant, hereinafter referred to as "CDBG", funds may be used for the support of activities that provide decent housing and suitable living environments and expanded economic opportunities principally for persons of low- and moderate-income; and,

WHEREAS, the Congress of the United States has enacted the Cranston-Gonzalez National Affordable Housing Act, Title II of this Act created the HOME Investment Partnership Program, hereinafter called "HOME", that provides funds to states and local governments for the purpose of increasing the number of affordable housing opportunities for low- and moderate income families; and

WHEREAS, the Congress of the United States provides funding for the Emergency Solutions Grant Program, hereinafter called "ESG", for the purpose of assisting individuals and families in quickly regaining stability in permanent housing after experiencing a housing crisis or homelessness; and

WHEREAS, this Amended and Restated Cooperation Agreement covers CDBG, HOME, ESG and other HUD entitlement grants; and

WHEREAS, COUNTY is a qualified Urban County and hereinafter COUNTY PROGRAM will refer to the COUNTY's CDBG, HOME, ESG and other HUD grants program as well as to the legislation and regulations that created and funded these programs; and

WHEREAS, HUD requires Metropolitan Cities and Urban Counties to re-qualify every three (3) years in order to receive an allocation of various grant funds from HUD; and

WHEREAS, CITY and COUNTY both desire for CITY to continue to be a part of COUNTY PROGRAM so both entities can benefit from increased efficiencies though economies of scale created by having the City's funding allocation of these grants be added and be a part of the COUNTY PROGRAM for 2015-16, 2016-17, 2017-18 and every three (3) years thereafter; and

WHEREAS CITY and COUNTY agree that COUNTY shall be solely responsible for administering, managing and directing COUNTY PROGRAM including but not limited to the preparation of the Consolidated Plan that is required to be submitted to HUD in order for COUNTY to have access to COUNTY PROGRAM funds and as such COUNTY has final authority for selecting activities that will be funded with COUNTY PROGRAM funds and;

WHEREAS, the execution of this Amended and Restated Cooperation Agreement, hereinafter referred to as AGREEMENT, is necessary in order to meet the desires of both CITY and COUNTY of having CITY be a part of COUNTY PROGRAM.

NOW THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived therefrom, the parties agree as follows:

1. GENERAL

This AGREEMENT gives COUNTY authority to undertake or assist in undertaking activities starting on July 1, 2015 for Fiscal Years 2015-2016, 2016-17, 2017-18, which will be funded from COUNTY PROGRAM funds, which will include CITY's funding allocations, and from any program income generated from the expenditure of such funds. COUNTY and CITY agree to cooperate to undertake, or assist in undertaking community renewal and affordable housing activities. This AGREEMENT shall automatically renew for a new three (3) year-period every time COUNTY re-qualifies as an Urban County, (which is every three (3) years), until such time as the City Council for the Town of Yucca Valley or San Bernardino County Board of Supervisors elects to terminate this AGREEMENT at the conclusion of the preceding three-year term. This AGREEMENT covers all COUNTY PROGRAM funds and other associated grants administered by HUD through its CPD Division or its successor.

By executing this AGREEMENT, CITY understands that it may not apply for grants under the Small Cities or State CDBG Programs from appropriations for fiscal years during the term of this AGREEMENT, and CITY may not participate in a HOME consortium other than COUNTY HOME program regardless of whether COUNTY receives a HOME formula allocation.

The purpose of the Delegate Agency Agreement, which accompanies this AGREEMENT (Exhibit 1), and subsequent ATTACHMENTS, is to enable CITY to implement projects and or programs funded with CDBG funds as described in SECTION 14.

2. TERM

The term of this AGREEMENT shall be for fiscal years 2015-16, 2016-17, 2017-18 and shall commence as of July 1, 2015. This AGREEMENT will subsequently automatically renew when COUNTY re-qualifies as an Urban County for the next three (3) year period and therefore a new three (3) year term of this AGREEMENT will begin at that time. The first of these automatic three (3) year term renewals will occur at the beginning of fiscal year 2018-2019 (July 1, 2018) and every three (3) years thereafter unless an earlier date of termination is fixed by HUD pursuant to COUNTY PROGRAM or until such time as the City Council for the Town of Yucca Valley or San Bernardino County Board of Supervisors elects to terminate this AGREEMENT at the conclusion of a 3-year term. This AGREEMENT shall remain in effect until all COUNTY PROGRAM grant funds covered under the terms of this AGREEMENT, and any program income generated from the expenditure of such funds, are expended, and the funded activities are completed. This AGREEMENT may not be terminated or withdrawn by the parties for any circumstance or reason during the term of this AGREEMENT.

In order for the automatic renewal provisions of this AGREEMENT to be approved, HUD mandates that this AGREEMENT includes a stipulation that requires CITY and COUNTY to adopt any amendment(s) necessary to meet the requirements for cooperation agreements set forth in an Urban County Qualification Notice applicable for a subsequent three-year urban county qualification period, and to submit such amendment to HUD as provided in the Urban County Qualification Notice and that such failure to comply will void the automatic renewal for such qualification period.

In addition, as part of the Urban County re-qualification process the COUNTY goes through every three (3) years, COUNTY will notify CITY, via a letter, that CITY has the ability to terminate this AGREEMENT and not

be included as part of the submission by COUNTY to HUD for re-qualifying as an Urban County for the subsequent three (3) year qualification period. CITY agrees to send a timely response letter to COUNTY stating its intentions to either continue to be a part the COUNTY PROGRAM or to elect to terminate this AGREEMENT and not be a part of the COUNTY's upcoming submission to HUD to re-qualify as an Urban County for the subsequent three (3) year period.

The COUNTY will submit to HUD the letter notifying CITY of its ability to terminate this AGREEMENT as well as the CITY's response letter. COUNTY will also submit to HUD a written legal opinion provided by COUNTY Counsel stating that the terms and provisions continue to be authorized under state and local law and that the AGREEMENT continues to provide full legal authority for COUNTY.

This automatic renewal procedure will remain the same even if the CITY is recognized by HUD as a Metropolitan City and therefore could receive CDBG funds directly from HUD.

The CITY will provide either CITY Council minutes approving the CITY being a part of the COUNTY Urban County program and to the automatic renewal procedure.

3. PREPARATION OF APPLICATION

COUNTY, by and through its Economic Development Agency (EDA), subject to approval of the COUNTY Board of Supervisors, shall be responsible for preparing and submitting to HUD all necessary applications for the COUNTY PROGRAM entitlement grants. This duty shall include the preparation and processing of COUNTY Housing, Community and Economic Development Needs Identification Report, Citizen Participation Plans, the County Consolidated Plan, and other related items associated with COUNTY PROGRAM grants which satisfy its associated application requirements and regulations. All documents will include information provided by CITY.

4. COMPLIANCE WITH FINAL PROGRAMS AND PLANS

COUNTY and CITY shall comply in all respects with final Community Development plans and programs and the Consolidated Plan which are developed through mutual cooperation pursuant to the application requirements of COUNTY PROGRAM and their regulations and approved by HUD.

5. COMPLIANCE WITH LEGISLATION AND REGULATIONS

COUNTY and CITY shall comply with all applicable requirements of COUNTY PROGRAM and associated regulations, in utilizing grant funds under legislation that created and govern these grants, and shall take all actions necessary to assure compliance with COUNTY certifications required by Section 104(b) of Title I of ACT, as amended regarding the provisions of the National Environmental Policy Act of 1969, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, Section 109 of Title I of ACT which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Fair Housing Act, and affirmatively furthering fair housing and other applicable federal laws. CITY agrees that CDBG and HOME funding for activities in or in support of CITY are prohibited if CITY does not affirmatively further fair housing within its own jurisdiction or impedes COUNTY actions to comply with its fair housing certification. CITY may be required to demonstrate how it complies with the fair housing requirement. To ensure compliance with applicable regulations, CITY agrees to adhere to the Delegate Agency Agreement which is Exhibit 1 of this AGREEMENT and the accompanying Attachments.

In order for COUNTY to avoid the risk of losing CDBG funds as a result of CITY not spending CITY CDBG funds in a timely manner as required by the ACT, COUNTY and CITY both agree that COUNTY has the authority to transfer CITY CDBG funds to any CDBG-eligible project/program at COUNTY's sole discretion if CITY is not spending its CDBG funds in a timely manner. Prior to transferring CITY CDBG funds, COUNTY will notify CITY in writing that CITY is at risk of not meeting this timeliness requirement and

therefore COUNTY will transfer CITY CDBG funds if timeliness is not met. As referred to in SECTION 10 DISPOSITION OF FUNDS, CITY and COUNTY both agree that CITY CDBG funds will be spent, to the greatest extent feasible in a manner CITY desires but COUNTY shall have the final and sole decision as to how CITY CDBG funds are spent.

Furthermore, CITY hereby covenants by and for itself, its successors and assigns, and all persons claiming under or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any project funded by HOME or CDBG funds, nor shall CITY itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in any project funded as a result of this AGREEMENT.

The CITY shall refrain from restricting the rental, sale or lease of any project funded as a result of this Agreement on the basis of race, color, creed, religion, sex, marital status, familial status, disability, national origin or ancestry of any person.

The CITY and COUNTY agree to cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities.

A unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receive CDBG funds in exchange for any other funds, credits or non-Federal consideration, but must use such funds for activities eligible under ACT, as amended.

6. CONFLICT OF INTEREST

CITY shall comply with all applicable federal and state laws, regulations and policies governing conflict of interest, including State conflict of interest regulations found in California Government Code Sections 1090, 1126, 87100 et seq., Federal conflict of interest regulations found in 24 CFR 570.611, 85.36, and 84.42, and any other applicable policies, rules and regulations related to conflict of interest.

Any person who is an employee, agent, consultant, officer, elected or appointed official of the CITY, who exercises any functions or responsibilities with respect to COUNTY PROGRAM funded activities identified in this AGREEMENT and who is in a position to participate in a decision-making process or gain inside information with regard to activities identified in this AGREEMENT, may not obtain a financial interest or benefit from the COUNTY PROGRAM assisted activities identified in this AGREEMENT or any related agreement, subcontract, or contract, either for themselves, an immediate family member or business partner, during his/her tenure. CITY shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

7. POLICIES

CITY has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and a policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.

8. INDEMNIFICATION

CITY agrees to indemnify, defend and hold harmless COUNTY and its respective authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this AGREEMENT, resulting from the negligent acts, errors or omissions of the CITY, its

authorized officers, employees, agents or volunteers, including, but not limited to, such liability, claims, losses, demands, and actions incurred by COUNTY as a result of the determination by HUD or its successor that activities undertaken by CITY under the program(s) fail to comply with any laws, regulations or policies applicable thereto or that any funds billed by and disbursed to CITY under this AGREEMENT were improperly expended.

COUNTY agrees to indemnify, defend and hold harmless CITY, its officers, agents, volunteers, and employees, from any and all claims, actual losses, damages and or liability that may result from the negligent acts, errors or omissions of the COUNTY, its authorized officers, employees, agents, or volunteers.

9. SELF-INSURANCE

The CITY and the COUNTY are authorized self-insured public entities for purposes of general liability, automobile liability, professional liability and workers' compensation. CITY and COUNTY warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against any liabilities arising out of their performance regarding the terms and conditions of this AGREEMENT

10. DISPOSITION OF FUNDS

Unless prohibited by Federal Regulations, COUNTY and CITY agree that, to the greatest extent feasible, CDBG funds will be allocated by COUNTY to CITY out of the funds received pursuant to ACT, according to its proportional demographics, for activities and/or projects prioritized by CITY to alleviate its identified community development needs eligible under ACT. COUNTY, through its Board of Supervisors, shall be responsible for determining the final disposition and distribution of all funds received by COUNTY under ACT and other related grants and for selecting the projects for which such funds shall be used. Both parties agree that COUNTY has the authorization to redistribute such funds when said projects are not implemented in a timely manner as described in SECTION 5, COMPLIANCE WITH LEGISLATION AND REGULATIONS.

HOME funds will be allocated by COUNTY to Developer(s) based on a competitive Notice of Funding Available process to address affordable housing needs by funding activities that are eligible under HOME regulations and COUNTY, by its Board of Supervisors, shall be responsible for determining the final disposition and distribution of all funds received by COUNTY under the HOME program as well as the other COUNTY PROGRAM funds and for selecting the projects for which such funds shall be used.

COUNTY shall be compensated for administering COUNTY PROGRAM and other related grants by utilizing allowable planning and administrative fee(s) and a project implementation fee.

11. DISPOSITION OF PROGRAM INCOME

CITY shall inform COUNTY regarding any income generated by the expenditure of COUNTY PROGRAM funds received by CITY. All said income, even if it is received after this AGREEMENT has expired, shall promptly be paid to COUNTY. COUNTY shall be responsible for monitoring and reporting to HUD on the use of any such program income; CITY is required to keep appropriate records and provide reports to COUNTY regarding program income. In the event of COUNTY PROGRAM funds close-out or change in status of CITY under COUNTY PROGRAM funds, any program income that is on hand or received subsequent to the close-out or change in status shall be paid to COUNTY. Any income generated from the disposition or transfer of real property prior to any such close-out or change of status shall be treated the same as program income. Any income generated from the disposition or transfer of real property subsequent to any such close-out or change of status shall promptly be paid to COUNTY.

12. DISPOSITION OF REAL PROPERTY

This section sets forth the standards which shall apply to real property acquired or improved in whole or in part using CDBG and HOME funds that are allocated to (within the control of) CITY. Prior to any modification or change in the use of said real property from the use or ownership planned at the time of its acquisition or improvements, CITY shall notify COUNTY and obtain authorization for said modification or change. CITY shall reimburse COUNTY with non-CDBG and non-HOME funds in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG or non-HOME funds) of property acquired or improved with CDBG or HOME funds that is sold or transferred for a use, which does not qualify under CDBG and HOME regulations.

13. EFFECTIVE DATES

This AGREEMENT shall be effective initially for all purposes for the period beginning July 1, 2015 and ending June 30, 2018. Thereafter, commencing July 1, 2018, this AGREEMENT will automatically renew for three-year periods every three (3) years, when the COUNTY re-qualifies as an Urban County, until such time as the CITY or COUNTY elects to terminate the AGREEMENT at the conclusion of the preceding term. This AGREEMENT will be executed by COUNTY and CITY, properly submitted to HUD, the grantor, by the designated deadline, and approved by HUD.

14. OTHER AGREEMENTS

Pursuant to federal regulations at 24 CFR 570.501(b), CITY is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement set forth in federal regulations at 24 CFR 570.503 and other related regulations. COUNTY and CITY as part of this AGREEMENT are also entering into a Delegate Agency Agreement (which is Exhibit 1 of this AGREEMENT) and accompanying ATTACHMENTS, for the purpose of having CITY implement CDBG-funded projects and or programs. COUNTY and CITY both agree it would be more effective and efficient if CITY implements projects and or programs funded with CITY CDBG funds. The purpose and intent of the Delegate Agency Agreement is to create a mechanism whereby COUNTY delegates its authority, under its Urban County agreement with HUD to CITY, thereby enabling CITY to implement projects and programs funded with CITY CDBG funds while the COUNTY ensures all associated rules and regulations are followed. Prior to disbursing any CDBG funds to CITY, COUNTY, shall execute and adhere to the Delegate Agency Agreement and related documents with CITY. Said agreement shall remain in effect during any period that CITY has control over CDBG funds, including program income.

The Delegate Agency Agreement provides a detailed account of the policies and procedures on how a project is officially assigned by COUNTY to the CITY for implementation and the steps that need to be completed by both CITY and COUNTY (above and beyond the approval of this AGREEMENT) prior to any obligation or expenditure of funds whereby the CITY will seek reimbursement from COUNTY. Any obligation and or expenditure made by CITY without the expressed written approval by COUNTY may result in CITY not being able to utilize CDBG funds.

15. AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING (ARRA)

Use of ARRA Funds and Requirements

This AGREEMENT may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and

manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Whistleblower Protection

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

COUNTY OF SAN BERNARDINO

TOWN OF YUCCA VALLEY

▶ _____
Gregory C. Devereaux, Chief Executive Officer

Dated: _____

By ▶ _____
(Authorized signature - sign in blue ink)

Name: Robert Lombardo
(Print or type name of person signing contract)

Title: Mayor
(Print or Type)

Dated: _____

Address: 57090 Twentynine Palms Hwy
Yucca Valley, CA 92284

Approved as to Legal Form
▶ _____
Michelle Blakemore, Chief Asst. County Counsel
Date _____

Reviewed by Contract Compliance
▶ _____
Art Milian, Contract Compliance
Date _____

Presented to BOS for Signature
▶ _____
Dena Fuentes, Department Head
Date _____



County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

<input type="checkbox"/> New	FAS Vendor Code		SC	Dept.	A	Contract Number			
<input checked="" type="checkbox"/> Change									
<input type="checkbox"/> Cancel									
ePro Vendor Number					ePro Contract Number				
County Department			Dept.	Orgn.	Contractor's License No.				
Community Development and Housing			ECD	ECD					
County Department Contract Representative				Telephone		Total Contract Amount			
Dena Fuentes, Director				(909)387-4411					
Contract Type									
<input type="checkbox"/> Revenue		<input type="checkbox"/> Encumbered		<input type="checkbox"/> Unencumbered		<input checked="" type="checkbox"/> Other:			
If not encumbered or revenue contract type, provide reason:									
Commodity Code		Contract Start Date		Contract End Date		Original Amount	Amendment Amount		
		July 1, 2015		June 30, 2018		N/A	N/A		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount			
SBA	ECD	ECD	200	2005		\$			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
						\$			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount			
						\$			
Project Name				Estimated Payment Total by Fiscal Year					
2015-16, 2016-17, 2017-18				FY	Amount	I/D	FY	Amount	I/D
CDBG City/County									
Delegate Agency Agreement									
Contract Type 2 (b)									

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

Name

Town of Yucca Valley

hereinafter called _____

Address

57090 Twentynine Palms Hwy

Yucca Valley, CA 92284

Telephone

(760) 369 - 7207

Federal ID No. or Social Security No.

IT IS HEREBY AGREED AS FOLLOWS:

In compliance with requirements of Title I of the Housing and Community Development Act of 1974, as amended, the County executed a Amended and Restated Cooperation Agreement with the Town of Yucca Valley to be a part of the County of San Bernardino's "Urban County" application to the federal Department of Housing and Urban Development (HUD) through mutual cooperation to undertake or assist in undertaking essential community development and housing activities. Pursuant to Section 14 of the Cooperation Agreement, this Delegate Agency Agreement and its attachments are set forth to further implement the provisions of the Cooperation Agreement. They specify the procedures, sequences, responsibilities and forms to be used to carry out CDBG activities according to local, state and federal requirements. The Amended and Restated Delegate Agency Agreement is specifically subordinate and supplementary to and runs concurrent with the Amended and Restated Cooperation Agreement.

Auditor-Controller/Treasurer Tax Collector Use Only

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

AMENDED AND RESTATED COMMUNITY DEVELOPMENT BLOCK GRANT
CITY-COUNTY DELEGATE AGENCY AGREEMENT
For Fiscal Years 2015-16, 2016-17, 2017-18 and SUBSEQUENT AUTOMATIC RENEWALS UNLESS
TERMINATED

This Amended and Restated Agreement accompanies the Cooperation Agreement, herein after referred to as AGREEMENT, made and entered into, by and between the County of San Bernardino a political subdivision of the State of California, referred to as "COUNTY", and the Town of Yucca Valley, a municipal corporation located within the boundaries of San Bernardino County, referred to as "CITY".

WITNESSETH

WHEREAS, COUNTY has been designated an "Urban County" by the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", as that term is defined in Title I of the Housing and Community Development Act of 1974 as amended, hereinafter referred to as "ACT"; and Whereas, COUNTY will administer a Community Development Block Grant (CDBG) program (CFDA No. 14.218) that includes the development of a Consolidated Submission of the HUD Housing and Community Development Grant programs, hereinafter referred to as "CONSOLIDATED PLAN", which constitutes COUNTY's application for federal assistance under said ACT; and,

WHEREAS, CITY and COUNTY have entered into a Amended and Restated Cooperation Agreement so as to enable CITY to be a part of COUNTY's CDBG program, commencing with Fiscal Years 2015-16, 2016-17, 2017-18 and set to automatically renew for three (3) year periods while the COUNTY is designated as an Urban County, to which this Delegate Agency Agreement is subordinate and supplementary agreement per SECTION 14 of Cooperation Agreement; and

WHEREAS, COUNTY administers a CDBG program for a number of cooperating cities, and in the unincorporated areas of San Bernardino County, through its Economic Development Agency, hereinafter referred to as "EDA"; and,

WHEREAS, CITY has the ability, expertise and resources to manage and administer CDBG-funded projects/programs and agrees to adhere to all rules, regulations and related requirements associated with the utilization of CDBG funds; and,

WHEREAS, CITY desires to assume the responsibility of project implementation within its corporate limits in cooperation with COUNTY; and,

WHEREAS, both COUNTY and CITY seek to coordinate their community development and neighborhood revitalization efforts in order to fully utilize all available resources while increasing efficiencies though economies of scale associated with the planning and administration of a large scale CDBG program; and

NOW, THEREFORE, it is understood and agreed by and between the parties hereto as follows:

1. PURPOSE

This Delegate Agency Agreement, which is Exhibit 1 to the Cooperation AGREEMENT, is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I of the Government Code of the State of California (commencing with Section 6500), relating to public agencies. The purpose of this Delegate Agency Agreement is to enable CITY to implement CITY-CDBG funded projects or programs while adhering to the provisions of the Cooperation AGREEMENT in carrying out CDBG activities that have been approved by COUNTY for CITY in accordance with the CONSOLIDATED PLAN. The purpose will be accomplished pursuant to the requirements of the ACT, its regulations and other

federal, state and county laws and policies in the manner hereinafter set forth. This Delegate Agency Agreement is not a stand alone agreement and is only valid as a component of the Cooperation AGREEMENT; whereas the Cooperation AGREEMENT is a stand alone agreement and will be valid even if this Delegate Agency Agreement no longer exists. In absence of this Delegate Agency Agreement the CITY would not be able to implement any CDBG-funded projects or programs; however the COUNTY would still be able to implement CITY or COUNTY CDBG-funded projects and or programs as authorized under the Cooperation AGREEMENT.

Unless specified otherwise, EDA shall have the authority to represent COUNTY regarding the terms and conditions of this Agreement and the administration thereof.

2. TERM

This Delegate Agency Agreement shall become initially effective starting Fiscal Years 2015-2016, 2016-17, 2017-18, beginning on July 1, 2015 and ending June 30, 2018. Thereafter, commencing July 1, 2018 this Delegate Agency Agreement, as part of the Cooperation AGREEMENT will automatically renew for three (3) year periods, when the COUNTY re-qualifies as an Urban County, until such time as the Town of Yucca Valley or County of San Bernardino elects to terminate at the conclusion of a 3-year term. Even though this Delegate Agency Agreement does not stand alone, in order to complete the construction of a previously funded project(s) it may be extend beyond the conclusion of a 3-year term. COUNTY, though its Chief Executive Officer or EDA Administrator may grant an extension of up to six months to the term of this Delegate Agency Agreement for the purpose of completing CITY's projects/activities that are underway and which can not be completed during the term of this AGREEMENT. CITY must request any such extension in writing. Any extension will only be effective if granted in writing by COUNTY. Maintenance and operation and monitoring requirements for facilities developed under the terms of this Delegate Agency Agreement, as described in SECTION 9 MAINTENANCE AND OPERATION OF FACILITIES and SECTION 15 MONITORING, shall be in effect and continue in full force as prescribed in SECTION 2 TERM of the Cooperation AGREEMENT and continue even if AGREEMENT is terminated or has expired.

3. AUTHORIZATION OF PROJECT/ACTIVITY

CITY shall not initiate nor incur expenses for any CDBG-funded project or activity covered under the terms of this Delegate Agency Agreement prior to receiving written authorization from COUNTY. Written authorization will be accomplished when Attachments A (Request to Initiate Project or Activity) and B (Project or Activity Description) to this Delegate Agency Agreement have been completed for a CDBG-funded project or activity and signed by CITY and countersigned by EDA. Any such authorized Project or Activity shall hereinafter be referred to as an "AUTHORIZED PROJECT".

4. IMPLEMENTATION OF AUTHORIZED PROJECT

CITY agrees to implement AUTHORIZED PROJECTS in the manner prescribed in the Delegate Agency Coordination Procedures (Attachment C), using the forms and language contained in the Delegate Agency Construction Contract Provisions (Attachment D), and agrees to comply with all applicable local county, state and federal regulations associated with the implementation of CDBG projects and with AGREEMENT.

CITY may contract for all necessary services to complete AUTHORIZED PROJECTS described on its executed Attachments A and B provided that contracts are submitted to and approved in writing by EDA prior to their execution. CITY Attorney is responsible for assuring and certifying that the AUTHORIZED PROJECT undertaken by CITY's contracting party complies with all applicable regulations and statutes, as amended, listed in Attachment C, the Delegate Agency Construction Contract, Section IV.

5. MODIFICATION OF AUTHORIZED PROJECTS

All modifications to AUTHORIZED PROJECT must be pre-approved by COUNTY in order to be considered a part of AUTHORIZED PROJECT and eligible for reimbursement by COUNTY. CITY may request modification(s) to CDBG funding levels authorized by Attachment A or the pertinent Project Description (i.e. Scope of Activity) authorized by Attachment B. Upon receipt of a written request from CITY, and approval by COUNTY, COUNTY will revise Attachments A and B.

6. CONSOLIDATED PLAN AMENDMENT

Requests by CITY to add, delete or substantially modify an activity listed in CONSOLIDATED PLAN must be made in writing to COUNTY. Requests to add new activity(ies) must be accompanied by a CDBG project proposal application.

Substantial modifications are defined as follows: 1) an increase in funding for a CDBG public service-type activity in an amount greater than \$50,000 over the current funded amount; or 2) an increase in the funding for other activities (public facility improvements, code enforcement, acquisition, etc.) in an amount greater than \$400,000 over the current funded amount; or 3) A new activity not previously listed and described in the Consolidated Plan/Annual Action Plan; or 4) a change in the type of activity; or 5) a change in the location of the activity; or 6) a change in the beneficiaries of the activity.

Requests for additions and substantial modifications will be reviewed by COUNTY for eligibility and compatibility with CONSOLIDATED PLAN. Additions, deletions and substantial modifications must be approved by CITY Council action and supportive documentation for said action must be sent to COUNTY. CITY shall comply with the requirements of and participate in the implementation of the citizen participation portion of CONSOLIDATED PLAN.

7. COUNTY RESPONSIBILITIES

COUNTY, through EDA, is empowered to enforce all federal regulations pertaining to CDBG-funded projects undertaken by CITY under AGREEMENT. CITY recognizes that COUNTY, as the formal grantee of the CDBG, has full responsibility and obligations to HUD for undertaking the CDBG Program and has full authority in administering and allocating funds. CITY will have no direct responsibilities or obligations to HUD, except as identified, under AGREEMENT. COUNTY will provide technical assistance to CITY in a timely and expeditious manner upon written request to EDA Administrator.

8. CONFORMANCE TO COUNTY PROCEDURES

Under this Delegate Agency Agreement, CITY elects to be responsible for implementing CDBG-funded projects. However, in implementing said projects, CITY must perform all services and activities in accordance with federal and state statutory requirements and with the policies and procedures established by the Board of Supervisors, and shall comply with the following:

A. COMMUNITY DEVELOPMENT ADMINISTRATOR

Upon COUNTY and CITY's mutual assent to this Delegate Agency Agreement, CITY will designate a "Community Development Administrator" by filling in the name of said person in the space provided below. The Community Development Administrator is the responsible authority for all correspondence with COUNTY, and is the signatory on AUTHORIZED PROJECT Attachments A and B and shall advise the CITY Council, CITY administration and CITY staff, as appropriate regarding the CDBG program. CITY may, by written notification as set forth below, change the Community Development Administrator.

CITY's Community Development Administrator for this Delegate Agency Agreement is

Curtis Yakimow, TITLE: Administrative Services Director

B. FISCAL CONTACT PERSON

For purposes of this Delegate Agency Agreement, CITY shall also designate a fiscal contact person by filling in the space provided below. The fiscal contact person shall be responsible for billing and fiscal procedures regarding the CDBG program and will serve as the primary contact for technical fiscal matters. CITY may, by written notification as set forth below, change the fiscal contact person.

CITY Fiscal Contact person for this Delegate Agency Agreement is

Sharon Cisneros, TITLE: Senior Accountant

- C. CITY shall be responsible for maintaining complete and separate fiscal accounts for CDBG funds which come under its control in such manner as to permit the reports required by COUNTY to be prepared therefrom and to permit the tracing of CDBG funds to their final expenditure. CITY will submit to EDA complete and detailed project descriptions, budgets, and expenses for each project that CITY implements with CDBG funds along with monthly reports of grant expenditures.

9. MAINTENANCE AND OPERATION OF FACILITIES

CITY shall provide maintenance and operation for the life of any and all facilities constructed with CDBG funds under AGREEMENT that are CITY owned or operated, for the life of the facility, not less than 10 years. This Section shall survive the termination of this Delegate Agency Agreement and or AGREEMENT.

10. FUNDING LIMITS

CDBG funding of AUTHORIZED PROJECTS is limited to the amount allocated to CITY as listed in the Attachment A (Request to Initiate Project or Activity).

11. DISBURSEMENT OF FUNDS

All CDBG funds allocated to CITY'S AUTHORIZED PROJECT(S) shall be received from the federal government by COUNTY under ACT. EDA will disburse the funds to CITY on a cost reimbursement basis. Billing shall be accompanied by all pertinent source documentation to be presented to EDA by CITY on or about the first day of each month, allowing 30 days for payment on the part of EDA. COUNTY shall be entitled to retain from such funds such amount as is calculated as the direct costs (including, but not limited to, salaries, benefits, mileage, actual cost of materials, meals and other authorized expenses allowable under the Travel Code Section 13.0638 County of San Bernardino) incurred by COUNTY in implementing CITY's AUTHORIZED PROJECTS.

12. WITHHOLDING OF FUNDS

COUNTY shall retain the right to withhold funds for any programs carried out by CITY, CITY's Contractor, or CITY's subcontractor upon giving written notice to CITY indicating that COUNTY has determined that CITY has not performed its obligations as stated in this Delegate Agency Agreement and or Cooperation AGREEMENT in a satisfactory or timely manner consistent with federal regulations or policy. COUNTY shall notify CITY in writing of this determination, specifying the objection(s) to

CITY's performance. CITY shall then have a maximum of ten (10) days in which to remedy said deficiencies. Should said deficiencies not be remedied within the above mentioned ten (10) day period, COUNTY shall have full authority to reallocate CITY's CDBG program funding to any other eligible activity(ies), which can be implemented or to assume sole responsibility for carrying out any and/or all AUTHORIZED PROJECTS, upon written notice to CITY. Upon such notice, CITY agrees to cease all activity provided hereunder, as specified in said notice.

13. PROGRAM INCOME

Program income represents net income directly generated from the use of CDBG funds by CITY as a result of the activity funded under the terms of AGREEMENT. When such income is generated by an activity only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. CITY shall return program income to COUNTY even if it is received after this AGREEMENT has expired. COUNTY shall have full authority to reallocate program income funding to any other eligible activity(ies), which can be implemented in a satisfactory or timely manner consistent with federal regulations or policy. Program income shall be returned to COUNTY within 30 days after: a) disposition or sale of real or personal property occurs or; b) cumulative program income reaches increments of \$1,000; or c) the end of each fiscal year. CITY shall include in the reports required by Section 14, PROGRAM REPORTING AND RETENTION OF RECORDS, all sources and amounts of program income on a monthly and year-to-date basis.

Program income returned by COUNTY to CITY will be spent by CITY on only those costs authorized under this Delegate Agency Agreement. All provisions of AGREEMENT shall apply to said use of program income funds. CITY shall account for the receipt and use of program income in such a way that program income is spent on AUTHORIZED PROJECTS before additional CDBG funds are spent.

Any program income on-hand when this AGREEMENT expires or is received after such expiration will be paid to COUNTY within thirty (30) days.

14. PROGRAM REPORTING AND RETENTION OF RECORDS

CITY agrees to prepare and submit financial, program progress, and other reports as required by HUD or COUNTY directives. CITY shall maintain such program, property, personnel, financial, statistical and other records, supporting documents, and accounts as are considered necessary by HUD or COUNTY to assure proper accounting for all AGREEMENT funds. Said records, documents and accounts are to be retained by CITY for a minimum of five years. The retention period starts from the date the COUNTY submits its annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the service under the terms of this AGREEMENT is reported on for the final time. Said COUNTY submission will follow CITY's final submission to COUNTY of reports identified under this paragraph. Records and accounts subject to litigation or audit must be maintained for five years or until the issue is resolved, whichever is longer.

Records that pertain to real estate transactions must be maintained for five years or the number of years that there is an outstanding obligation, whichever is longer. The starting date for retention of records on CDBG-purchased equipment begins at the end of the equipment's use, when it is disposed of or transferred. The retention period for records relating to program income begins on the last date of COUNTY fiscal year in which the income is earned. All CITY's records, with the exception of confidential client information, shall be made available to representatives of COUNTY and the appropriate federal agencies. CITY is required to submit data necessary to enable the COUNTY to complete any and all necessary reports in accordance with HUD regulations in the format and at the time designated by the EDA Administrator or his designee.

15. MONITORING

EDA Administrator or designee will conduct periodic monitoring of CITY administration of AUTHORIZED PROJECTS. Monitoring will focus on the extent to which the CONSOLIDATED PLAN has been implemented, measurable goals achieved and effectiveness of project management, and impact of AUTHORIZED PROJECTS. Authorized representatives of COUNTY and HUD shall have the right of access to all activities and facilities operated by CITY under this AGREEMENT. Facilities include all files, records, and other documents related to the performance of this AGREEMENT. CITY will permit on-site inspection by COUNTY, and HUD representatives, and ensure that its employees furnish such information, as in the judgment of COUNTY and HUD representatives, may be relevant to a question of compliance with contractual conditions and HUD directives, or the effectiveness, legality, and achievements of the program.

16. ACCOUNTING

CITY must establish and maintain, on a current basis, an adequate accrual accounting system in accordance with generally accepted accounting principles and standards.

17. AUDITS

CITY is required to arrange and pay for an independent financial and compliance audit annually for each fiscal year during which federal funds are received under this AGREEMENT as required by Circular A-128 pursuant to the Single Audit Act of 1984, Public Law 98-502. The results of the single audit must be submitted to COUNTY within 30 days of completion. Within 30 days of the submittal of said audit report, CITY shall provide a written response to all conditions or findings reported in said audit report. The response must examine each condition or finding and explain a proposed resolution, including a schedule for correcting any deficiency. All condition or finding correction actions shall take place within six months after EDA's receipt of the audit report. An audit may also be conducted by federal, state or local funding source agencies as part of the COUNTY's audit responsibilities. COUNTY and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of CITY. CITY's staff will cooperate fully with authorized auditors when they conduct audits and examinations of CITY's program. If indications of misappropriation or misapplication of the funds of this AGREEMENT cause COUNTY to require a special audit, the cost of the audit will be encumbered and deducted from funds allocated to CITY's CDBG AUTHORIZED PROJECTS. Should COUNTY subsequently determine that the special audit was not warranted, the amount encumbered will be restored to said CDBG AUTHORIZED PROJECT allocations. Should the special audit confirm misappropriation or misapplication of funds, CITY shall reimburse COUNTY the amount of misappropriation or misapplication from non-CDBG funding sources.

18. REVERSION OF ASSETS

Upon AGREEMENT termination, CITY shall transfer to COUNTY all CDBG funds on-hand (including, but not limited to, program income) at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

All real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 under this AGREEMENT must continue in the use that provides the service benefits and national objectives, for which it was funded until five years after expiration of this AGREEMENT as set forth in 24 CFR 570.503, or such longer period of time as determined by COUNTY; or it must be disposed of in a manner resulting in a reimbursement to COUNTY in the amount of the current fair market value of the property, as determined by COUNTY, less any portion thereof attributable to expenditures of non-

CDBG funds for the acquisition of, or improvement to the property. This Section 18 shall survive the termination of this AGREEMENT.

19. TERMINATION AND TERMINATION COSTS

This Delegate Agency Agreement may be terminated in whole or in part at any time by either party upon giving 60 days notice in writing to the other party if for whatever reason either party no longer desires to have CITY implement CDBG funded projects/programs. If the Delegate Agency Agreement is terminated, the AGREEMENT shall continue in full force until such time as described in SECTION 1 GENERAL and SECTION 2 TERM of AGREEMENT. An agreement must be reached by both parties as to conditions for termination in compliance with the provisions of federal regulations at 24 CFR Part 85.44, Termination for Convenience. EDA is hereby empowered to give said notice subject to ratification by the COUNTY Board of Supervisors.

COUNTY may immediately terminate this Delegate Agency Agreement upon the termination, suspension, discontinuation or substantial reduction in HUD CDBG funding for the Delegate Agency Agreement activity or if for any reason the timely completion of the work under this AGREEMENT is rendered improbable, infeasible or impossible. If CITY materially fails to comply with any term of this AGREEMENT, COUNTY may take one or more of the actions provided under the federal regulation at 24 CFR Part 85.43, Enforcement, which includes temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the award, withholding future awards, and other remedies that are legally available. In such an event, CITY shall be compensated for all services rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have been previously reimbursed, to the date of said termination to the extent that CDBG funds are available from HUD.

20. PROJECT ACKNOWLEDGMENT

Should CITY determine that the funding sources or the names of responsible public officials be displayed on a completed building or significant project, such identification should be acknowledged on a plaque, permanently mounted in an appropriate location, made of bronze or other appropriate material, acknowledging the funding source as the Department of Housing and Urban Development, San Bernardino County Community Development Block Grant. The current Board of Supervisors and the members of the CITY Council shall also be identified. When multiple funding sources are utilized to construct a project, all funding sources shall be identified. The listing order of multiple funding sources identified on the plaque shall be the largest dollar amount first, the second largest dollar amount second, etc.

21. CONTRACT COMPLIANCE

CITY will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and Labor Surplus Area Firms (a firm located in an area of high unemployment) are used when possible in compliance with provisions of Title 24 code of federal regulations Part 85.36(e).

CITY shall comply with Executive Orders 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107, (Equal Employment Opportunity), Executive Orders 11625, 12138, 12432, 12250, and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, and other applicable federal, state and COUNTY laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

CITY shall make every effort to ensure that all projects funded wholly or in part by CDBG program funds shall provide equal employment and career advancement opportunities for minorities and women. In addition, CITY shall make every effort to employ residents of the area and shall keep a report of CITY staff positions that have been funded directly by, or as a result of this program.

22. DISCRIMINATION

No person shall, on the grounds of race, sex, creed, color, religion, or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment by CITY.

23. STANDARDS OF CONDUCT

Pursuant to Office of Management and Budget Circular A-110 Attachment O and 24 CFR 570.611, Conflict of Interest, and 24 CFR Part 85.36, Procurement, CITY shall maintain a written code or standards of conduct that shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of the CITY shall participate in selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization, which employs, or is about to employ, any of the above, has financial or other interest in the firm selected for award.

CITY officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-Agreements.

CITY may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by CITY's officers, employees, or agents, or by contractors or their agents.

24. FORMER COUNTY OFFICIALS

CITY agrees to provide or has already provided information on former COUNTY Administrative Officials (as defined below) who are employed by or represent CITY. The information required includes a list of former COUNTY Administrative Officials, who terminated County employment within the last five years and are now officers, or employees of CITY. The information includes the employment with or representation of CITY. For purposes of this provision, "COUNTY Administrative Official" is defined as a member of the Board of Supervisors or such Officer's staff, COUNTY Chief Executive Officer or member of such Officer's staff, COUNTY Department or Group Head, Assistant Department or Group Head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

25. RELIGIOUS PROSELYTIZING OR POLITICAL ACTIVITIES

CITY agrees that it will not perform or permit any religious proselytizing or political activities in connection with the performance of this Agreement. Funds under this AGREEMENT will be used exclusively for performance of the work required under this Agreement and no funds made available under this AGREEMENT shall be used to promote any religious or political activities.

26. INDEMNIFICATION

CITY agrees to indemnify, defend and hold harmless COUNTY and its respective authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this AGREEMENT, resulting from the negligent acts, errors or omissions of the CITY, its authorized officers, employees, agents or volunteers, including, but not limited to, such liability, claims, losses, demands, and actions incurred by COUNTY as a result of the determination by HUD or its successor that activities undertaken by CITY under the program(s) fail to comply with any laws, regulations or policies applicable thereto or that any funds billed by and disbursed to CITY under this AGREEMENT were improperly expended.

COUNTY agrees to indemnify, defend and hold harmless CITY, its officers, agents, volunteers, and employees, from any and all claims, actual losses, damages and or liability that may result from the negligent acts, errors or omissions of the COUNTY, its authorized officers, employees, agents, or volunteers.

This SECTION 26 INDEMNICATION shall survive the termination of this Delegate Agency Agreement.

27. SELF-INSURANCE

The CITY and the COUNTY are authorized self-insured public entities for purposes of general liability, automobile liability, professional liability and workers' compensation. CITY and COUNTY warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against any liabilities arising out of their performance regarding the terms and conditions of this AGREEMENT.

28. AMENDMENTS: VARIATIONS

This writing, with attachments, embodies the whole of this Delegate Agency Agreement of the parties hereto. There are no oral agreements contained herein. Except as herein provided, additions or variations of the terms of this Delegate Agency Agreement shall not be valid unless made in the form of a written amendment to this Delegate Agency Agreement formally approved and executed by both parties.

29. AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING (ARRA)

Use of ARRA Funds and Requirements

This AGREEMENT may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal

Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

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Whistleblower Protection

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA

COUNTY OF SAN BERNARDINO

TOWN OF YUCCA VALLEY

► _____
Gregory C. Devereaux, Chief Executive Officer

By ► _____
(Authorized signature - sign in blue ink)

Dated: _____

Name: Robert Lombardo
(Print or type name of person signing contract)

Title: Mayor
(Print or Type)

Dated: _____

Address: 57090 Twentynine Palms Hwy
Yucca Valley, CA 92284

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

► _____
Michelle Blakemore, Chief Asst. County Counsel

► _____
Art Milian, Contract Compliance

► _____
Dena Fuentes, Department Head

Date _____

Date _____

Date _____

ATTACHMENT A - REQUEST TO INITIATE PROJECT/ACTIVITY

PROJECT/CASE NUMBER:

DATE OF ORIGINAL ISSUE:

CFDA No.: 14.218

ORIGINAL: REVISION No.:

TARGET AREA:

DATE OF REVISION:

Pursuant to the terms of the Delegate Agency Agreement between Economic Development Agency (EDA)/Department of Community Development and Housing (CDH), and the City of _____, dated _____, CDH hereby requests that the following project/activity be initiated. There will be no changes in Project/Activity Title, Activity Budget (Attachment A) or in the Activity Description (Attachment B) without written approval of EDA Administrator/CDH Director/ or their Designee.

PROJECT/ACTIVITY TITLE:

ACTIVITY LOCATION:

TOTAL PROJECT FUNDING: \$ _____
CITY CDBG ALLOCATION
RELEASED: \$ _____
CITY CDBG FUNDS
EXPENDED AS OF _____: \$ _____

DATE OF RELEASE OF FUNDS:

BALANCE OF FUNDS AVAILABLE: \$ _____

SCHEDULE OF CITY CDBG ALLOCATION:

<u>Year 1-37</u>	<u>Year 38</u>	<u>Year 39</u>	<u>Year 40</u>	<u>Year 41</u>	<u>Year 42</u>	<u>Year 43</u>	
<u>Act# _____</u>	<u>Act# _____</u>	<u>Act# _____</u>	<u>Act# _____</u>	<u>Act# _____</u>	<u>Act# _____</u>	<u>Act# _____</u>	<u>TOTAL OF</u>
<u>(75-2012)</u>	<u>(2012-13)</u>	<u>(2013-14)</u>	<u>(2014-15)</u>	<u>(2015-16)</u>	<u>(2016-17)</u>	<u>(2017-18)</u>	<u>43 YEARS</u>
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

MAINTENANCE AND OPERATION BUDGET/AGREEMENT:

OTHER PERTINENT INFORMATION:

ACCEPTANCE OF REQUEST TO INITIATE PROJECT/ACTIVITY

I hereby acknowledge the receipt of the Request to Initiate the above Project/Activity and agree to implement the activity described in Attachment B (Project/Activity Description) in accordance with the above Allocation and Balance of Funds Available subject to necessary approvals of the Board of Supervisors. The proposed budget for this project is as follows:

<u>LAND ACQUISITION:</u>	\$ _____	<u>PURCHASE OF EQUIPMENT:</u>	\$ _____
<u>STAFF COST RELATED</u>	_____	<u>CONSTRUCTION COST:</u>	\$ _____
<u>TO LAND ACQUISITION:</u>	\$ _____	<u>CITY STAFF COST:</u>	\$ _____
<u>DESIGN:</u>	\$ _____	<u>CONTINGENCY:</u>	\$ _____
<u>CONSULTANT SERVICES:</u>	\$ _____		

TOTAL CITY CDBG ALLOCATION AVAILABLE: \$ _____

IMPLEMENTING CITY: _____ DATE: _____

SIGNATURE: _____ TITLE: _____

COUNTY OF SAN BERNARDINO

 EDA Administrator/ CDH Director or Designee DATE: _____

ATTACHMENT B - PROJECT/ACTIVITY DESCRIPTION

PROJECT/CASE NUMBER:

DATE OF ORIGINAL ISSUE:

CFDA No.: 14.218

ORIGINAL: REVISION No.:

TARGET AREA:

DATE OF REVISION:

PROJECT/ACTIVITY TITLE:

ACTIVITY LOCATION:

ACTIVITY DESCRIPTION:

IMPLEMENTING CITY:

DATE

SIGNATURE

TITLE

COUNTY OF SAN BERNARDINO

DATE

EDA Administrator/CDH Director or Designee

Attachment C
COUNTY OF SAN BERNARDINO
ECONOMIC DEVELOPMENT AGENCY
DELEGATE AGENCY
COORDINATION PROCEDURES

I. Introduction

The following procedures identify the actions, responsibilities, and sequence of events for Community Development Block Grant, hereinafter referred to as "CDBG", funded projects being implemented by a coordinated effort between the County of San Bernardino Economic Development Agency hereinafter referred to as EDA and the Delegate Agency, hereinafter referred to as "DA". For each action or event listed in Section III of this attachment, the entity responsible for carrying out that action or event is referenced beside it. Section IV contains regulations and statutes applicable to CDBG funded activities.

II. Authorization to Proceed

The Delegate Agency is not authorized to expend funds or to initiate CDBG projects until authorized to do so in writing by EDA. Contract procurement shall be governed by all Federal regulations and statutes, as amended, listed in Section IV of the Attachment. EDA payments of DA Requests for Reimbursement will be subject to DA submittal of a complete reimbursement report package as listed in Section III, D-20.

A. Project/Activity Budget

Each project activity is initiated by an Attachment "A". The Attachment "A" is released when the project/activity is ready to be implemented and subsequent to environmental clearance and release of funds from HUD. It specifies the total funding allocation for the project/activity, the portions currently released and available to expend, the budget categories, the allocation will be expended under, and the entity responsible for maintenance and operation of the completed project.

In accepting the Attachment "A" the DA is to complete an estimated budget showing the allocation distribution to design costs, staff costs, construction costs, etc. This breakdown may also include a contingency or inflation factor not to exceed 10% of the total activity allocation.

Approval to change the project/activity budget/funds available will come from EDA in the form of a revised Attachment "A" (and corresponding Attachment "B", if appropriate).

B. Activity Description

The activity description is forwarded to the DA as Attachment "B". The preparation of the project description, both preliminary and final, is the responsibility of the EDA Community Development Division.

The description should be specific enough for use as the scope of work funded by CDBG money in a Request for Proposal (RFP) for architectural or engineering services or for a vendor in preparing a bid. It will contain, but is not limited to, the following:

1. Title of Project/Activity
2. Activity Number
3. Specific site description
4. On- and off-site improvement description
5. Size of building
6. Fixtures list (such as stove, built-in equipment)

7. Water and sewer requirements
8. Utilities
9. Specific zoning and planning requirements
10. Specific uses of the site and/or building
11. Equipment
12. Functions

Approval to change the project/activity description will come from EDA in the form of a revised Attachment "B" (and corresponding Attachment "A", if appropriate).

EDA will complete the Attachments "A" and "B" and will send two copies each to DA for signature. Once signed and fully completed, they must be returned to EDA for signature. An original of each will be returned to DA signifying authorization to proceed with actions outlined in the following sections:

III. Actions and Responsibilities

A. Property Acquisition

The DA can pursue the acquisition of real property (and related relocation requirements, if necessary) through its jurisdiction or request the County's Public and Support Services Group Real Estate Services Department, hereinafter referred to as "RES", to handle the acquisition and/or relocation. If relocation is required, initiate a 90-day notice to occupant(s).

1. If DA wishes to purchase the property, the following procedures should be followed:
 - a. DA: Refers to HUD Handbook 1378 which implements the Uniform Relocation Assistance and Real Property Acquisition regulations including the Federal Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Braithwaite Act of the State of California and any subsequent amendments to these acts and regulations. If relocation is required, the appropriate notices will be issued in accordance with the "Timely Notices" (49CFR 24.203) provision of the Relocation Handbook 1378.
 - b. DA: Obtains required appraisals.
 - c. DA: Reviews required appraisals and/or leases to determine if property can be acquired within the project allocation.
 - d. DA: Sends all lease documents to EDA for approval.
 - e. DA: Sends any requests for adjustments of funds for property acquisition and/or relocation to EDA for approval.
 - f. EDA: Issues approvals in relation to "d" above and sends them to DA.
 - g. DA: Initiates lease or purchase.
 - h. DA: Sends Request for Advance of Funds to EDA, 10 working days prior to expected close of escrow, with all appropriate documentation attached.

2. If DA desires to have RES handle acquisition and/or relocation activities, the DA should follow this procedure:
 - a. DA: Submits a letter to EDA requesting that RES handle the project/activity describing in detail what property is to be acquired, giving all pertinent information, and identifying who the DA contact person is to be. If relocation is required, initiate a 90-day notice to occupant(s).
 - b. EDA: Initiates appraisal process.
 - c. RES: Obtains required appraisals.
 - d. RES: Forwards appraisals to DA.
 - e. DA: Reviews appraisals and/or leases to determine if property should be acquired and/or leased. Prepares and forwards request to EDA.
 - f. EDA: Reviews request from DA, and forwards Authorization to Proceed to RES (Note: all leases and all adjustments in project allocations must be requested and approved by EDA).
 - g. RES: Initiates purchase or lease of property. If relocation is required, the appropriate notices will be issued in accordance with the "Timely Notices" (49 CFR 24.203) provision of the Relocation Handbook 1378.

RES will work with the designated DA contact person throughout the acquisition/relocation process to assure that the DA is aware of the activities and can make any necessary decisions in relation to the activity.

B. Architect and/or Engineer Selection

1. The usual procedure for the selection of an architect or engineer involves a Request for Proposal (RFP) for professional services, following this process:
 - a. DA: Prepares an RFP for architectural and engineering or other consultant services.
 - b. DA: Submit draft RFP to EDA for review for contract compliance and consistency with Federal Title 24 CFR, Part 85 Section 85.36, (Procurement Standards).
 - c. DA: Incorporates EDA revisions, if any, into RFP and reviews RFP's for compliance with State, Federal, Local and EDA regulations. Requests EDA "Approval to Proceed" to Issue "RFP".
 - d. EDA: Issues to DA an "Approval to Proceed" to issue an "RFP".
 - e. DA: Advertises RFP, receives responses, interviews, requests EDA representation on selection committee and makes selection.
 - f. DA: Notifies EDA of selection. Sends back-up documentation and draft contract to EDA. Submits to EDA a "Request for Approval to Proceed" to award a "Consultant Services Contract".
 - g. EDA: Reviews final contract for compliance and issues an "Approval to Proceed" to award a "Consultant Services Contract".

- h. DA: Awards Consultant Services Contract.
- 2. Architectural and engineering services may also be negotiated under certain situations; i.e., obtained through a sole source procurement. This is an eligible alternative requiring the following steps:
 - a. DA: Determines that the situation warrants sole source procurement and that such procurement will comply with requirements and criteria specified in Federal Title 24 CFR Part 85.36, (Procurement Standards).
 - b. DA: Selects architect, engineer or other consultants.
 - c. DA: Submits to EDA a "Request for Approval to Proceed" to award a "Sole Source Consultant Services Contract" to EDA explaining why the DA has chosen the consultant and why the competitive RFP procedure is not being used.
 - d. EDA: Reviews the request and approves or denies sole source procurement request based on explanation and backup.
 - e. EDA: Issues "Approval to Proceed" to award a "Sole Source Consultant Services Contract" authorization or denial of request.
 - f. DA: Negotiates and awards the sole source contract.

C. Design Phase

- 1. DA: Monitors preparation of preliminary plans by architect.
- 2. DA: Notifies EDA of all public meetings with architect, five working days before event.
- 3. EDA/
DA: Reviews and approves preliminary design.
- 4. DA: Secures all required permits and regulatory approvals.
- 5. DA: Secures plans, check of plans and specifications from the appropriate Building and Safety Authority.

D. Construction Phase

- 1. DA: Reviews and approves plans and specifications, and obtains current Federal Wage Decision from EDA or online at <http://www.wdol.gov/dba.aspx#0>, to be included in the bid package.
- 2. DA: Forwards construction bid package and approved plans to EDA for review and approval along with a "Request for Approval to Proceed" to issue an "Invitation to Bid" for construction services. Attachment "D" - "Construction Contract Labor Compliance Provisions" must be part of the complete bid package submitted to EDA for approval.
- 3. EDA: Reviews and approves construction bid package for compliance with Federal and local regulations and forwards "Approval to Proceed" to invite bids with changes (if any) to DA.

4. DA: Determines bid solicitation process permitted by CDBG requirements under Federal Title 24 CFR Part 85.36 (Procurement Standards), and County contracting regulations. Advertises "Invitation to Bid" and receives bids.
5. DA: Ten days prior to bid opening, DA makes telephone contact with EDA and requests from EDA or obtains online at <http://www.wdol.gov/dba.aspx#0> the current Federal Wage Decision. If the Federal Wage Decision is in any way different from that issued in the original bid package, DA will issue a bid addendum and immediately forward the latest wage decision to all bidding contractors who, in turn, submit revised bids prior to the bid opening. DA shall notify EDA of any change in the Federal Wage Decision should DA use the online option above.
6. DA: Conducts bid opening and reviews bid documents submitted by the low-bidder to assure compliance with County Policy 15-01, if applicable, and 24 CFR 85.36(e) regarding the participation of minority, disadvantaged and women business enterprises (MWBE's) in the proposed construction contract. If DA has its own plan that meets the aforementioned requirements, it may use this plan for bid document reviews.
7. DA: Submits the low-bidder information and list of subcontractors to EDA and a "Request for Approval to Proceed" to award a "Construction Services Contract". If adjustment of funds or project description is needed, the written request for reallocation of funds (revised Attachment "A") or change in project description (revised Attachment "B") should be sent at this time.
8. EDA: Prepares revisions to Attachment "A" and/or "B" as requested (if necessary).
9. EDA: Reviews Contractor/Subcontractor's eligibility to receive Federal contracts.
10. EDA: Issues "Approval to Proceed" to award a "Construction Services Contract" to DA.
11. DA: Insures completeness of contract documents prior to award of contract. **Prime and Sub-Contractor Construction contracts must contain the Labor Compliance Contract Addendum (LCCA)**, a copy of applicable Federal Wage Determination, and a copy of restrictions on public buildings and public works projects provisions.
12. DA: Awards Contract.
13. DA: Notifies EDA of pre-construction conference at least five working days prior to event. **Prime and Sub-Contractor's labor compliance personnel must attend pre-construction conference.** Submits required EDA documents (Ex: completed bid package) prior to pre-construction meetings, including Contractor Information Sheet.
14. DA: Conducts pre-construction conference (EDA attendance mandatory). EDA sets up prime contractor on LCPtracker.

15. DA/
EDA: DA provides EDA with a copy of signed contract which incorporates the LCCA prior to start of construction. DA ensures completion of bonds and all required labor compliance documentation is accepted in LCPtracker. EDA obtains Project Wage Rate Sheet from Prime Contractor which includes all federal labor classifications that will be utilized on the project by the Prime Contractor as well as ALL Sub-Contractors.
16. DA: Keeps an up-to-date record of all encumbrances and obligations, including staff costs incurred, to assure that the remaining balance of funds is known.
17. EDA/
DA: Ongoing observation and monitoring of projects.
18. DA: Conducts on-site interviews with contractor employees for each trade regarding their wages. Sends original signed Record of Employee Interview (HUD-11) to EDA. EDA may require Record of Employee Interview to be entered on LCPtracker.
19. DA: Ensures contractor's submission of Weekly Certified Payroll in LCPtracker.
20. DA: Receives Contractor requests for progress payments and any other documentation of expenditures and work accomplished. DA reviews labor compliance reports in LCPtracker.
21. EDA: Reviews Contractor Weekly Certified Payroll on LCPtracker during the term of construction, including non-performance payrolls.
21. EDA: Checks wages reported on Certified Payroll forms against employee interview forms for consistency between wage rates reported by contractor and wages received by employees.
22. DA: Submits to EDA during the term of the construction contract, a report package containing:
 - Request for Reimbursement and accompanying documentation. Payments on said requests are subject to complete compliance with Federal Labor Standards.
23. DA: Notifies EDA of all meetings regarding EDA projects, such as Design Conferences, Public Meetings, and meetings with Community Development Advisory Commission, and DA at least five working days before event occurs.
24. DA: Processes change orders and sends copy(ies) of proposed change order(s) along with a "Request for Approval to Proceed" to issue a "Contract Change Order" to EDA. Must obtain approval from EDA regarding all change orders *prior* to authorizing the contractor to proceed with said changes.
25. DA: Notifies EDA of proposed changes in the list of subcontractor(s) and submits a "Request for Approval to Proceed" to add or delete subcontractor(s) from the approved list.
26. EDA: Revises Attachments "A" or "B", if necessary, and issues an "Approval to Proceed" to issue a "Change Order(s)" to DA.

27. DA: Notifies EDA of final inspections at least five working days before inspection date.
28. DA: Attends final inspections (EDA attendance optional).
29. DA: Secures its governing body's acceptance of completed project and filing of Notice of Completion and submits "Notice of Completion" to EDA.
30. EDA: Monitors project progress and contract compliance and issues, as necessary, "Notice to Submit Final Activity Costs" notices to DA.
31. DA: Takes necessary actions to comply with said notices.
32. EDA: Conducts "Annual Certification of Use of Facilities".

IV. DA must ensure compliance with the following regulations and statutes, as amended, in carrying out CDBG funded activities:

- A. Community Development Block Grant Regulations of the Housing and Community Development Act of 1974, as amended (24 CFR 570).
- B. Applicable Uniform Administrative Requirements:
 - 1) Office of Management and Budget Circular A-87
 - 2) Office of Management and Budget Circular A-128
 - 3) 24 CFR Part 85
- C. Applicable Uniform Administrative Requirements for Subrecipients that are not Governmental Entities:
 - 1) Office of Management and Budget Circular A-110
 - 2) Office of Management and Budget Circular A-122
 - 3) 24 CFR Part 84
- D. Federal Labor Standards Compliance Handbook No. 1344.1 REV-1 including:
 - 1) Davis-Bacon Act (40 U.S.C. 276a to a-7)
 - 2) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)
 - 3) Copeland Act (18 U.S.C. 874)
- E. Equal Employment Opportunity Requirements of Executive Order 11246, as amended
- F. Environmental Protection Agency Regulations (40 CFR Part 1500-1508)
- G. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128)
- H. Archaeological and Historic Preservation Act of 1974
- I. Rehabilitation Act of 1973, as amended

- J. Americans With Disabilities Act
- K. Clean Air Act (42 U.S.C. 7401 et. seq.)
- L. Clean Water Act (33 U.S.C. 1368)
- M. Section 3 Regulations of the Housing and Urban Development Act of 1968, Title 24 CFR, Part 135 (12 U.S.C. 1701u)
- N. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et. seq.)
- O. Fair Housing Act (42 U.S.C. 3601-20)
- P. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601-4655)
- Q. Hatch Act
- R. Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b))

ATTACHMENT D

TABLE OF CONTENTS

- CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS2
- ELECTRONIC SUBMISSION OF CERTIFIED PAYROLLS:.....2
- REQUIRED DOCUMENTS CHECKLIST3
- FEDERAL LABOR STANDARDS PROVISIONS4
- SECTION 3 CLAUSE8
- AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-
CONSTRUCTION CONTRACTORS9
- EQUAL OPPORTUNITY CLAUSES 13
- CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS.....21
- DAVIS-BACON WAGE DETERMINATION.....22
- SAMPLE DOCUMENTS22

CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS

The following are definitions of state and federal provisions/documents for federally-assisted projects. Please refer to the "Required Documents Checklist" for any documents to be completed and submitted for this project.

Affirmative Action Compliance Guidelines for Construction or Non-Construction Contractors – Generally, affirmative action requirements apply to contracts and subcontracts in excess of \$10,000. This document provides guidelines to help Contractors meet affirmative action and equal employment opportunity requirements set forth in federal regulations 41 CFR 60.

Bid Bond – A bid guarantee of at least 10% of the contract price is required from each bidder and must be submitted with the Bid.

Certificate of Owner's Attorney – This certificate is to be completed by the owner's attorney when applicable.

Certification of Bidder Regarding Equal Employment Opportunity – This certification is required by Federal law (41 CFR 60) and must be completed by the Prime Contractor and submitted to the CITY/COUNTY prior to the pre-construction conference.

Certification of Compliance with Air and Water Acts – The prime Contractor and all Subcontractors must comply with this certification when the contract exceeds \$100,000.

Certification by Proposed Subcontractor Regarding Equal Employment Opportunity – This certification must be completed by all Subcontractors and every lower-tier Subcontractor and submitted to the Prime Contractor for submittal to the CITY/COUNTY prior to the pre-construction conference.

Contractor's Certification of Compliance with Davis-Bacon and Related Acts – This certification is required by federal law (29 CFR 5) and must be completed by the Prime Contractor and submitted to the CITY/COUNTY prior to the pre-construction conference.

Equal Employment Opportunity Clauses/Equal Employment Opportunity Construction Contract Provisions – These provisions are to be inserted in all applicable federally-assisted contracts and subcontracts.

Federal Labor Standards Provisions (HUD 4010 form) – These provisions set forth the federal labor requirements for contractors working on federally-assisted construction projects in which the prime contract exceeds \$2,000. The Prime Contractor and all Subcontractors and every lower-tier subcontractor are required to pay their laborers and mechanics working onsite a wage as specified in the FEDERALLY FUNDED PROJECTS section of this provision. *The Prime Contractor is responsible to include the Labor Compliance Contract Addendum in all executed Subcontractor contracts for this project.*

Federal Prevailing Wage Decision – The Federal Wage Decision contains the federal wage rates for construction projects within the County of San Bernardino. A copy of the Wage Decision is included in the bid package and can also be found at <https://www.sam.gov/portal/public/SAM/> or <http://www.wdol.gov/dba.aspx> the wage decision that applies to the project is the one in effect ten days prior to the bid opening date.

Labor and Materials Bond – This payment bond guarantees that employees/Subcontractors, and suppliers are paid for services rendered and materials supplied. The Labor and Materials Bond must be at least 100% of the contract price and must be submitted to the CITY/COUNTY upon award of the contract.

Performance Bond – This bond guarantees the Contractor's performance under the terms of the construction contract and must be at least 100% of the contract price and submitted to the CITY/COUNTY following award of the contract.

Section 3 – This law applies to construction contracts exceeding \$100,000 on projects funded by the U.S. Department of Housing and Urban Development (HUD). To the greatest extent feasible, Contractor(s) and Subcontractor(s) must attempt to become a Section 3 business. A Section 3 business is one owned by a low-income person, a business of which 30% of the workforce is comprised of low-income individuals, or a business that contracts 25% of its work to Section 3 businesses.

ELECTRONIC SUBMISSION OF CERTIFIED PAYROLLS:

As permitted by the Department of Labor (DOL), The Department of Housing and Urban Development (HUD), and Title 8, section 16404 of the California Code of Regulations, the Prime Contractor and each Subcontractor and every lower-tier Subcontractor and all vendors subject to Davis-Bacon and Related Acts, are required to submit certified payrolls and labor compliance documentations electronically via the software LCPtracker Inc.

Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser. The Prime Contractor and Subcontractors and lower-tier Subcontractors will be given a Log-On Identification and Password to access the County of San Bernardino Community Development and Housing reporting system.

Use of the system may entail additional data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Prime Contractor's and Subcontractor's and lower-tier Subcontractor's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.

This requirement will be 'flowed down' to every lower-tier Subcontractor and vendor required to provide labor compliance documentation. Please contact County of San Bernardino Community Development and Housing for approval and log-in instructions for a lower-tier Subcontractor.

The Prime Contractor and each Subcontractor and every lower-tier Subcontractor and any Vendors subject to this provision shall comply with Title 8, Section 16404 of the California Code of Regulations.

Electronic Certified Payroll Set-up and Training Courses

To start, the Prime and Subcontractors and lower-tier Subcontractors will receive an email invitation to join LCPtracker. Simply follow the instructions in the email to **set-up your user name and password** and activate your account. Once your account is setup, LCPtracker Inc. provides two convenient training options:

Option 1: Computer-Based Training Courses: Pre-recorded videos can be viewed at any time by logging into the LCPtracker website and following these simple steps:

- Enter your user name/password
- Select the "E-Training" link located at the top of the page.
- Select "Contractor Training Videos"

Option 2: Web-Based Training Sessions: Online training sessions facilitated by members of LCPtracker's Customer Support team are available several times per week. All you need to participate is a computer with Internet access, an email address and access to a phone.

- Enter your user name/password
- Select "Book Now" on the "Projects" tab and register for the Online training sessions.

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity - The bidder's attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Specifications" contained in the bid package. Goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, is 19% for minorities and 6.9% for women.

REQUIRED DOCUMENTS CHECKLIST

REQUIRED PRIOR TO CONTRACT AWARD

- 1. Bid Package signed by Contractor or letter stating that the project specifications document is part of the contract
- 2. Signed Partnership Agreement (if applicable)
- 3. Bid Bond

REQUIRED PRIOR TO PRECONSTRUCTION CONFERENCE

- 4. Executed Contract/Purchase Order NOTE: HUD form 4010 must be attached to contract
- 5. Labor Compliance Contract Addendum signed by Prime Contractor and all Subcontractors
- 6. Bonds (performance/payment or labor and material bonds)
- 7. Completed Bidder/Subcontractor's Certification Regarding Equal Employment (Exhibits B & C)*
- 8. Signed Contractor's Certification of Compliance with Davis-Bacon and Related Act Requirements (Exhibit A)*
- 9. Signed Affirmative Action Compliance Form for Construction Contracts Over \$10,000 (Exhibit D)*

REQUIRED DURING CONSTRUCTION

- 10. Weekly Certified Payrolls (see "Electronic Submission of Certified Payrolls" section)
- 11. Statement of Understanding and Authorization (required if payrolls are certified by someone other than the owner or corporate officer) (Exhibit E)*
- 12. Fringe Benefit Statement (required if employee benefits are paid to a trust fund) (Exhibit F)*
- 13. Section 3 Report (Applies to contracts of \$100,000 or more)
- 14. Authorization for Payroll Deduction(s) (Exhibit G)*

*Note: These forms are located on the LCPtracker online database discussed in "Electronic Submission of Certified Payrolls" section and will be discussed by County CDH staff at the preconstruction conference.

1. Applicability

The project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or

its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part

of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number. The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee.

(Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work

actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, who is not registered and participating in a training plan approved by the Employment and Training Administration, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

Subcontracts. The Contractor or Subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the Subcontractors to include *these clauses in any lower tier subcontracts*. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

SECTION 3 CLAUSE

(Information for the Section 3 Report will be input on LCPtracker)

- 3-2.2 Employment opportunities for business and lower income persons in connection with assisted projects. This clause applies to construction contracts of \$100,000 or more, on projects funded with \$200,000 or more in federal funds from the U.S. Department of Housing and Urban Development.

Assurance of compliance with regulations.

- (A) Every contract or agreement for a grant, loan, subsidy or other direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities and new community facilities and new community development, entered into by the Department of Housing and Urban Development with respect to a Section 3 covered project shall contain provisions requiring the applicant or recipient to carry out the provisions of Section 3, the regulations set forth in this part, and any applicable rules and orders of the Department issued thereunder prior to approval of its application for assistance for a Section 3 covered project.
- (B) Every applicant, recipient, contracting party, Contractor and Subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as Section 3 clause):
- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development as is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns, which are located or owned in substantial part by persons residing in the area of the project.
 - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth to 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
 - c. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organizations or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR 135. The Contractor will not subcontract unless the Subcontractor has first provided him with a preliminary statement of ability to comply with the requirements of these regulations.
 - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors and assigns, to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135

**AFFIRMATIVE ACTION COMPLIANCE
GUIDELINES FOR CONSTRUCTION AND
NON-CONSTRUCTION CONTRACTORS**

AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTORS

These Affirmative Action Compliance Guidelines have been designed to provide Contractors with information necessary to comply with Federal regulations found under Title 40, Part 60 of the Code of Federal Regulations. It is the intent of these guidelines to insure that equal opportunity for employment is practiced by the Contractor without regard to race, color, sex, religion, national origin, disability, and veteran's status. These guidelines provide the minimum information necessary to comply with EEO and affirmative action requirements, including the preparation of an Affirmative Action Plan that complies with federal regulations regarding Affirmative Action for federally-assisted projects. Contractors are urged to contact the implementing entity or the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) officer for any necessary technical assistance in meeting Affirmative Action requirements if they are considering bidding under this contract.

I. AFFIRMATIVE ACTION COMPLIANCE PROGRAM

A. The Affirmative Action program embodies the following principals:

1. Discrimination because of race, color, age, sex, religion, national origin, marital status, disability, or veteran's status is inconsistent with the constitution, laws, and policies of the United States, State of California and County of San Bernardino.
2. The implementing entity is committed to insuring that there be no discrimination by vendors, Contractors (including professional services and consultants), lessors, or lessees doing business with the implementing entity.
3. Contractors and Subcontractors agree to take affirmative personnel actions to hire and promote workers who traditionally have been discriminated against in the job market, including women, minorities, members of certain ethnic and religious groups, individuals with disabilities, and veterans.

B. Affirmative Action Step Requirements for CONSTRUCTION Contractors and Subcontractors:

1. Personnel affirmative action in recruitment, hiring, and promotion is required by Contractor and Subcontractors who have entered into a federally-assisted construction or non-construction contract that exceed \$10,000 or \$10,000 in the aggregate over a 12-month period.
2. Contractors and Subcontractors who enter into a CONSTRUCTION CONTRACT in excess of \$10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in 41 CFR 60-4.3 (a) (7) and are also included under "Standard Federal Equal Employment Opportunity Construction Contract Specifications" of Attachment "D" of the bid package.

C. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors:

1. All Contractors who have entered into a NON-CONSTRUCTION CONTRACT and who: 1) do business in the amount of \$50,000 or more with the implementing entity in any one fiscal year and, 2) employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.
2. All Subcontractors rendering services or supplies to a Contractor in the amount of \$50,000 or more and employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.

D. Exemptions under 41 CFR 60:

The following persons/contracts shall be exempt from this program:

1. A contract or contracts by a Contractor that do not exceed \$10,000 in the aggregate over a 12-month period.
2. Contracts for Work outside the United States
3. State and Local Governments
4. Contracts with certain educational institutions
5. Work on or near Indian Reservations
6. Specific contracts and facilities found exempt by
7. Deputy Assistant Secretary
8. National security contracts

Any Contractor who feels qualified for an exemption should contact the local Contract Compliance Officer or the U.S. Department of Labor's OFCCP Officer for further information.

II. SATISFYING AFFIRMATIVE ACTION PLAN

A. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors can be met through the following:

1. Completing a Contract Compliance Qualifying Report for Non-construction Contractors and Vendors, (refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).
2. Completing a Contractor's Affirmative Action Policy, including methods of recruiting minorities and women. If the Contractor does not have its own Affirmative Action Policy, it may adopt the County's model Affirmative Action Policy ((refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).
3. Following Federal Affirmative Action Plan guidelines which comply with the requirements of 41 CFR 60.2.10.

DEFINITIONS

Unless a provision of a contract otherwise requires, certain words and phrases shall be defined as follows:

- A. "Affirmative Action" is a commitment to increase the number of minorities and women in the work force by setting employment goals and timetables, including action to achieve objectives. Affirmative Action seeks to ensure that discrimination is eliminated in dealings with employees or applicants for employment whether the discrimination is intentional or unintentional. In addition, Affirmative Action seeks to improve job standards and productivity through the removal of artificial and unnecessary barriers to employment and promotion and ensure that all job actions are related to job performance measures.
- B. "Affirmative Action Plan" is a written affirmative plan required of Contractors and Subcontractors who have 50 or more employees and have entered into a contract with the implementing entity that exceeds \$50,000 or \$50,000 in contracts over a 12-month period.
- C. "Contract" means a federally-assisted purchase order, offer and acceptance, lease, agreement or other arrangement creating an obligation to which the implementing entity is a party, which would make one of the parties within the definition a Contractor.
- D. "Construction" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services.
- E. "Contractor" means a prime Contractor or Subcontractor.
- F. "Covered Area" means the geographical area described in the solicitation from which the contract resulted;
- G. "Director" means Director, OFCCP, U.S. Dept. of Labor, or any person to whom the Director delegates authority to;
- H. "Employee" means one who performs work for compensation, or a person who is permanently or regularly employed by the Contractor or Subcontractor.
- I. "Employer Identification Number" means the Federal Social Security Number;
- J. "Handicapped Status" means any person who:
1. Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
 2. Has a record or such impairment or,
 3. Is generally regarded as having such an impairment.
- K. "Employer Identification Number" means the Federal Social Security Number;
- L. "Handicapped Status" means any person who:
1. Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
 2. Has a record or such impairment, or
 3. Is generally regarded as having such an impairment.
- M. "Implementing Entity" means public jurisdiction who is administering the contract.
- N. "Minority" includes:
1. Black (all persons having origins in any Black African racial groups not of Hispanic origin);
 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 3. Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
 4. American India or Alaskan native (all persons having origins in any of the native peoples of North America and maintaining identifiable tribal affiliations through membership and participation in community identification).
- O. "Non-construction Contract" means any contract that does not fall within the definition of "Construction Contract".
- P. "Officer" means the Contract Compliance Officer of the implementing entity or U.S. Department of Labor Office of Federal Contract Compliance Program (OFCCP) Officer.
- Q. "Persons" means any individual, firm, co-partnership, public service, joint venture, association, social club, fraternal organization, corporation, estate, trust receiver, syndicate CITY, county, municipal corporation, district or other political subdivision, or any other group or combination acting as a unit.
- R. "Underutilization" means having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.
- S. "Vietnam-Era Veteran" means a person who:
1. Served on actual duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released there from with other than a dishonorable discharge; or
 2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

T. Violation and Appeal Procedure:

1. A Contractor found in violation of equal opportunity/affirmative action laws will be referred to the U.S. Department of Labor's OFCCP Division, and the Solicitor for Labor, Associate Solicitor of Labor Relations and Civil Rights Regional Solicitors and Regional Attorney are authorized to institute enforcement proceedings by filing a complaint and serving that complaint to the Contractor (defendant), in accordance with procedures set forth in 41 CFR 60-30.5. The complaint shall contain information on the alleged violation, a prayer regarding the relief being sought, and the name and address of the attorney representing the Government. Within 20 days after receiving the complaint, the defendant shall file an answer with the Chief Administrative Law Judge, if the case has not been assigned to an Administrative Law judge.
2. The answer shall contain a statement of the facts which constitute the ground of defense, and shall:
 - 1) specifically admit, explain, or deny each of the allegations of the complaint unless the defendant is without knowledge, or
 - 2) state that the defendant admits all the allegations contained in the complaint. The answer may contain a waiver for a hearing and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or plead specifically to an allegation of the complaint shall constitute an admission of such allegation.
3. Contractor agrees to fully comply with the laws and programs (including regulations issued pursuant thereto) identified herein. Such compliance is required to the extent such laws, programs and their regulations are, by their own terms, applicable to this contract. Contractor warrants that he will make himself thoroughly familiar with the applicable provisions of said laws, programs, and regulations prior to commencing performance of the contract. Copies of said laws, programs, and regulations are available upon request from the implementing entity's Contract Compliance Officer, or from the U.S. Department of Labor's OFCCP Officer to the extent applicable the provisions of said laws programs and regulations are deemed to be a part of this contract as if fully set forth herein.
4. Vietnam Era Veterans' Readjustment Assistance Acts of 1972 and 1974, as amended. Pub. L. 92-540, Title V, Sec 503(a), Pub. L 93-508. Title IV, Sec. 402. (38 USCA 2011-2013).
5. Rehabilitation act of 1973, as amended (Handicapped) Pub. L 93-112 as amended. (29 USCA 701-794).
6. California Fair Employment Practice Act. Labor Code Sec. 1410 *et seq.* Civil Rights Act of 1964, as amended (42 USCA 2000a to 2000H-6) and Executive Order No. 11246, September 24, 1965, as amended.

EQUAL OPPORTUNITY CLAUSES

The Contractor and Subcontractors not found exempt under 41 CFR 60-1.5, are required to comply with the following equal opportunity clauses as a condition of being awarded a federally-assisted contract. Each nonexempt prime Contractor shall include equal employment opportunity clauses in each of its nonexempt Subcontractors.

EQUAL OPPORTUNITY CLAUSE FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS

This clause is inserted pursuant to Executive Order 11246 of September 24, 1965, as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR Sec. 60-1.4. The following requirements apply to Contractors and Subcontractors

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 1124 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee), refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

In addition to the above, Contractor will agree to furnish all information and reports, including Standard form EEO-1, if applicable, to the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's OFCCP, as required by Executive Order No. 11246 of September 24, 1965.

EQUAL OPPORTUNITY CLAUSE FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

This clause is inserted pursuant to Executive Order 11701 of January 24, 1973 and the Vietnam Era Veterans Readjustment Assistance Acts of 1972 and 1974 (P.L. 92-540, 93-508), and is applicable pursuant to 41 CFR Sec. 60-250.

- (1) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State

Employment Service System wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

- (3) Listings of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.
- (4) The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State Employment Service. Such reports shall indicate for each hiring location, (a) the number of individuals hired during the reporting period, (b) the number of non-disabled veterans of the Vietnam Era hired, (c) the number of disabled veterans of the Vietnam Era hired, and (d) the total number of disabled veterans hired. The reports shall include covered veterans hired for on-the-job training under 38 USC Sec. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location, copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- (5) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (6) This clause does not apply to the listing of employment openings, which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

- (7) The provisions of paragraphs (2), (3), (4) and (5) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer - union arrangement for that opening.
- (8) As used in this clause:
- a. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative and professional openings as are compensated on a salary basis of less than \$25,000 per year. The term includes full-time employment, temporary employment of more than three days duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement or openings in an educational institution which are restricted to students of that institution. Under most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
 - b. "Appropriate office of the State Employment Service System" means the local office of the federal - state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Colombia, Guam, Puerto Rico and the Virgin Islands.
 - c. "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
 - d. "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer - union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- (9) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (10) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (11) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era for employment, and the rights of applicants and employees.
- (12) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
- (13) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
- (14) Collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
- (15) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

EQUAL OPPORTUNITY CLAUSE FOR WORKERS WITH DISABILITIES

This clause is inserted pursuant to the Rehabilitation Act of 1973 (P.L. 93-112) and 41 CFR Sec. 60-741-4.

- (1) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (3) In the event of the Contractor's non-compliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer.
- (5) Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (6) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (7) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500.00 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**STANDARD FEDERAL EQUAL
EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT PROVISIONS
(EXECUTIVE ORDER 11246, PURSUANT TO
41 CFR 60-4.3 (a))**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarter Federal Tax Return. U.S. Treasury Department form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which the contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonable the able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance programs Office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and

shall implement affirmative action steps at least as extensive as the follow 16 steps:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees that each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the item and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment source, the Contractor shall send written

notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors; adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a – p). The efforts of a Contractor association, joint Contractor-union, Contractor-community or other similar group of which the

Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation, which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum

results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the director shall proceed in accordance with 41 CFR 60-4.6.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws

which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- a) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid conditions for Federal and federally Assisted Construction published at 41 CFR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

Minority Goals

The goal for the utilization of women employees on federally-assisted construction contracts is set at 6.9%.

The goal for utilization of minorities, based on the Standard metropolitan Statistical Area (SMSA) for Riverside/San Bernardino County is 19%.

For additional information on these goals, please contact the OFCCP-Pacific Region at (415) 848-6969.

CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to federally assisted construction contracts
and related subcontracts exceeding \$100,000)

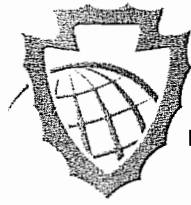
During the performance of this Contract, the Contractor and all Subcontractors shall comply with the requirements of the Clean Air act, as amended, 42 U.S.C. 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the forgoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the owner, the following:

- (1) A stipulation by the Contractor or Subcontractors, that any facility to be utilized in the performance of any nonexempt Contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor to include, or cause to be included, the criteria and requirements in paragraph (1) through (3) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

-Insert-

**CURRENT DAVIS-BACON WAGE DETERMINATION WHEN
CONSTRUCTION PROJECT GOES OUT TO BID**



**CONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH
 DAVIS-BACON AND RELATED ACTS REQUIREMENTS**

PRIME CONTRACTOR

PROJECT NAME: _____ PROJECT CODE: _____

PROJECT ADDRESS: _____

PRIME CONTRACTOR NAME: _____

As the Prime Contractor for the above referenced project, I hereby make the following certification and acknowledgment with respect to the applicability of **"DAVIS-BACON AND RELATED ACTS"** requirements:

1. By entering into this contract I certify and acknowledge that the above referenced project is federally funded and, as the Prime Contractor, I am solely responsible for complying with the **"DAVIS-BACON AND RELATED ACTS"** requirements; and
2. The Prime Contractor and all Subcontractors are required to pay their laborers and mechanics employed a wage not less than the highest wage applicable to their work classifications. If no federal work classification appears to apply, the Prime Contractor shall make a written request to the County of San Bernardino to obtain the applicable work classification and wage rate prior to the start of construction. The Prime Contractor is solely responsible for ensuring that all Subcontractors are in compliance with the **"DAVIS-BACON AND RELATED ACTS"** requirements.

 PRIME CONTRACTOR _____
 DATE

 PRIME CONTRACTOR SIGNATURE _____
 TITLE

**IF PRIME CONTRACTOR IS A CORPORATION OR PARTNERSHIP
 LIST THE LEGAL NAMES AND TITLES OF ALL PARTNERS OR CORPORATE OFFICERS.**

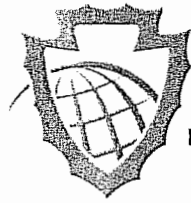
 NAME _____
 TITLE

 NAME _____
 TITLE

 NAME _____
 TITLE

 NAME _____
 TITLE

 NAME _____
 TITLE



**SUBCONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH
 DAVIS-BACON AND RELATED ACTS REQUIREMENTS**

SUBCONTRACTOR

PROJECT NAME: _____ PROJECT CODE: _____

PROJECT ADDRESS: _____

PRIME CONTRACTOR NAME: _____

SUBCONTRACTOR NAME: _____

As the undersigned Subcontractor, having executed a contract with the above named contractor on the above referenced project, hereby make the following certification and acknowledgment with respect to the applicability of **"DAVIS-BACON AND RELATED ACTS"** requirements:

1. By executing a contract with the above named contractor, I/we certify and acknowledge that the above referenced project is federally funded and will comply with the **"DAVIS-BACON AND RELATED ACTS"** requirements.
2. I/we have read the **"LABOR COMPLIANCE CONTRACT ADDENDUM"** including the wage determination for the above referenced project. I/we acknowledge the receipt and adherence to following provisions set forth in the **"FEDERAL LABOR STANDARDS PROVISIONS"** before participation on this project.
3. I/we will include the **"LABOR COMPLIANCE CONTRACT ADDENDUM"** including the wage determination for the above referenced project in any lower tier subcontracts/purchase orders executed. I/we will forward to Prime Contractor a copy of all executed subcontracts/purchase orders to any lower tier subcontractors within seven (7) days of the execution date.

 SUBCONTRACTOR _____
 DATE

 SUBCONTRACTOR SIGNATURE _____
 TITLE

**IF SUBCONTRACTOR IS A CORPORATION OR PARTNERSHIP
 LIST THE LEGAL NAMES AND TITLES OF ALL PARTNERS OR CORPORATE OFFICERS.**

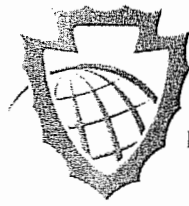
 NAME _____
 TITLE

 NAME _____
 TITLE

 NAME _____
 TITLE

 NAME _____
 TITLE

 NAME _____
 TITLE



**CERTIFICATION OF BIDDER REGARDING
 EQUAL EMPLOYMENT OPPORTUNITY**

PRIME CONTRACTOR

PROJECT NAME: _____ **PROJECT CODE:** _____

PROJECT ADDRESS: _____

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed Subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the **Equal Opportunity Clause**; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

BIDDER'S CERTIFICATION

BIDDER'S NAME: _____

ADDRESS: _____

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

Yes No (IF YES, identify the most recent contract.) _____

(IF NO, contractor may be required to submit an EEO-1 survey or other reports to the Equal Employment Opportunity Commission, EEOC at 800-669-4000 or online at <http://www.eeoc.gov/eeo1survey/index.html>).

2. Compliance reports were filed in connection with such contract or subcontractor with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission.

Yes No None Required

3. Has Bidder ever been or is bidder being considered for sanction due to violation of EXECUTIVE ORDER 11246, as amended. <http://www.dol.gov/compliance/laws/comp-eeo.htm>

Yes No

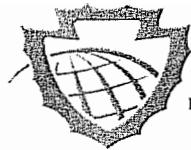
Certification: The information above is true and complete to the best of my knowledge and belief.

 PRIME CONTRACTOR (Print Name)

 TITLE

 CONTRACTOR SIGNATURE

 DATE



**CERTIFICATION BY PROPOSED SUBCONTRACTOR
 REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

SUBCONTRACTOR

PROJECT NAME:

PROJECT CODE:

PROJECT ADDRESS:

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective Contractor, or any of their proposed Subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the Equal Opportunity Clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the Subcontractor has not filed a compliance report due under applicable instructions, such Subcontractor shall be required to submit a compliance report before the Prime Contractor approves the subcontract or permits work to begin under the subcontract. No contract shall be awarded unless such report is submitted.

SUBCONTRACTOR'S CERTIFICATION

SUBCONTRACTOR'S NAME:

ADDRESS:

1. Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.

Yes No (IF YES, identify the most recent contract.) _____

(IF NO, contractor may be required to submit an EEO-1 survey or other reports to the Equal Employment Opportunity Commission contact EEOC at 800-669-4000 or online at <http://www.eeoc.gov/eeo1survey/index.html>.

2. Compliance reports were filed in connection with such contract or subcontractor with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission.

Yes No None Required

3. Subcontractor has ever been or is being considered for sanction due to violation of EXECUTIVE ORDER 11246, as

amended. <http://www.dol.gov/compliance/laws/comp-eeo.htm>

Yes No

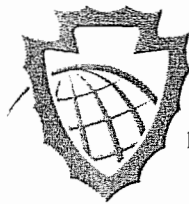
Certification: The information above is true and complete to the best of my knowledge and belief.

 SUBCONTRACTOR (Print Name)

 TITLE

 SUBCONTRACTOR SIGNATURE

 DATE



**AFFIRMATIVE ACTION COMPLIANCE FORM
 FOR CONSTRUCTION CONTRACTS OVER \$10,000**

PRIME CONTRACTOR	SUBCONTRACTOR
-------------------------	----------------------

PROJECT NAME:	PROJECT CODE:
---------------	---------------

COMPANY – CONTRACTOR NAME:

Please check the box that applies to your company to affirm an understanding and implementation of AFFIRMATIVE ACTION COMPLIANCE requirements and that you have read and completed the requirements for the project as noted below:

**I / We have reviewed and understand the “CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)” of the bid package and/or “LABOR COMPLIANCE CONTRACT ADDENDUM”.
 MANDATORY REQUIREMENT**

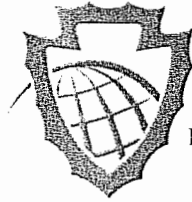
I / We DO currently maintain an effective Affirmative Action Program. The Affirmative Action Program complies with the Standard Federal Equal Employment Opportunity Construction Contract Provisions Executive Order 11246, pursuant to 41 CFR 60-4.3 (a) and will furnish a copy upon request.

I / We DO NOT currently maintain an Affirmative Action Program. I / We agree to the Equal Opportunity Clause for Federally-Assisted Construction Contracts (Executive Order 11246), as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR 60-1.4) of “CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)” of the bid package and/or “LABOR COMPLIANCE CONTRACT ADDENDUM”.

Personnel affirmative action in recruitment, hiring and promotion is required by Contractors and Subcontractors who have entered into a federally-assisted construction contract that exceeds \$10,000 or \$10,000 in the aggregate over a 12-month period. Contractors or Subcontractor who enter into a “Construction Contract” in excess of \$10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in 41 CFR 60-4.3 (a) (7) and are also included under “Standard Federal Equal Employment Opportunity Construction Contract Specifications” of “CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)” of the bid package and/or “LABOR COMPLIANCE CONTRACT ADDENDUM”.

I certify the information above is true and complete to the best of my knowledge and belief.

CONTRACTOR (Print Name)	TITLE
CONTRACTOR SIGNATURE	DATE



COUNTY OF
SAN BERNARDINO
ECONOMIC DEVELOPMENT AGENCY

CERTIFICATE OF UNDERSTANDING
AND AUTHORIZATION FORM

PRIME CONTRACTOR	SUBCONTRACTOR
-------------------------	----------------------

**** Complete If Owner/Officer Is NOT Signing Statement of Compliance ****

PROJECT NAME:	PROJECT CODE:
COMPANY – CONTRACTOR NAME:	

The undersigned certifies that the company principal(s), and the authorized payroll officer have read the most current "DAVIS-BACON LABOR STANDARDS" (A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects) and understand the labor standards clauses pertaining to this project including the pre-construction conference discussions and all related documents required for this project by the implementing agency in the pre-construction checklist package.

THE FOLLOWING PERSON(S) IS DESIGNATED AS THE PAYROLL OFFICER FOR THE UNDERSIGNED COMPANY CONTRACTOR AND IS AUTHORIZED TO SIGN THE STATEMENT OF COMPLIANCE WHICH WILL ACCOMPANY EACH WEEKLY CERTIFIED PAYROLL REPORT FOR THIS PROJECT.

_____	_____
PAYROLL AGENT (PRINT NAME)	PAYROLL AGENT (SIGNATURE)

_____	_____
OWNER/OFFICER (PRINT NAME)	OWNER/OFFICER (SIGNATURE)

_____	_____
TITLE (PARTNER/CORPORATE OFFICER OR OWNER)	DATE

***** A PAYROLL OFFICER MAY SELF-CERTIFY AUTHORIZATION TO SIGN PAYROLL REPORTS ONLY IF A SOLE-PROPRIETOR. ALL OTHERS MUST HAVE AUTHORIZATION FROM A SECOND CORPORATE OFFICER / PARTNER OR OWNER. *****

EXHIBIT: E

FRINGE BENEFIT STATEMENT FORM

PRIME CONTRACTOR		SUBCONTRACTOR	
PROJECT NAME:		PROJECT CODE:	
COMPANY – CONTRACTOR NAME:			
Use this form to identify those bona fide Fringe Benefit Plan(s) in which your employees are participating. List all third party plans, funds or trustees to which your firm makes fringe benefit payments in the interest of your employees. Provide an hourly equivalent of each fringe type (in dollars) below. Payrolls will be monitored to ensure the proper Fringe Benefit rates are being paid. Additional documentation may be required.			
CLASSIFICATION:		EFFECTIVE DATE:	SUBSISTENCE OR TRAVEL PAY \$:
FRINGE BENEFIT HOURLY AMOUNT:	NAME, ADDRESS AND CONTACT INFORMATION OF PLAN, FUND OR PROGRAM		
VACATION/HOLIDAY \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
HEALTH & WELFARE \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
PENSION \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
APPRENTICE/TRAINING \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
OTHER \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
CLASSIFICATION:		EFFECTIVE DATE:	SUBSISTENCE OR TRAVEL PAY \$:
FRINGE BENEFIT HOURLY AMOUNT:	NAME, ADDRESS AND CONTACT INFORMATION OF PLAN, FUND OR PROGRAM		
VACATION/HOLIDAY \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
HEALTH & WELFARE \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
PENSION \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
APPRENTICE/TRAINING \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
OTHER \$:	NAME:		
	ADDRESS:		
	CONTACT INFORMATION:		
I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds or programs as listed above:			
_____		_____	
CONTRACTOR (PRINT NAME)		TITLE	
_____		_____	
OWNER/CONTRACTOR SIGNATURE		DATE	

EXHIBIT: F

FRINGE BENEFIT FORM INSTRUCTIONS

Supplemental statements MUST be submitted during the progress of work should a change in rate of any of the classifications be made.

NOTE: To receive credit for employer paid benefit contributions, plans must be bona fide and contributions must be documented. On the Fringe Benefit Statement, indicate the name, address and phone number of the administrator of the Plan, Fund or Program.

VACATION PLAN/PAID HOLIDAY DOCUMENTATION: Please submit copies of your company's policy for employer paid vacation and holidays. For vacation, please explain how you track the vacation hours for each employee. Additionally, please submit copies of monthly reports or statements from the bank/fund depository showing that the plan and vacation amounts are available for the workers.

HEALTH AND WELFARE DOCUMENTATION: For your Health & Welfare Plan, please submit copies of the plan documentation indicating monthly or quarterly billings for the covered benefits (and delineating all benefits per worker), as well as statements and copies of checks transmitted by your company to the trust fund or plan for these benefits.

PENSION PLAN DOCUMENTATION: Please submit copies of the plan documentation from the Plan Administrator including the plan summary, account balances, monthly or quarterly transmittals into the account and copies of checks transmitted by your company as payments into the accounts.

APPRENTICE/TRAINING DOCUMENTATION: Please submit copies of the Apprentice/Training Certification Letter from your Federally Registered Program Sponsors. The apprenticeship program must be registered with the Department of Labor (DOL), Office of Apprenticeship. Include level, step or period of the apprentice; apprentice's wage scale and ratio information. A training or apprentice wage can be paid only if the trainee is registered in a DOL approved apprenticeship or training program or with a State Apprenticeship Agency recognized by DOL. Otherwise, the individual is to be paid the Davis-Bacon and Related Acts (DBRA) prevailing wage rate for the classification of work that they are performing regardless of their skill level. (Federal regulations DO NOT REQUIRE the employment of apprentices on federally funded projects)

OTHER DOCUMENTATION: Please submit copies of explanation, monthly reports or statements and plan documentation from the Plan Administrator for all "OTHER" company paid plan(s). The implementing agency will verify plan(s) for employer to receive credit.

FRINGES PAID IN CASH: Indicate if some or all fringes will be added to the employee's basic hourly rate.

If your company does not operate under a collective bargaining agreement or contribute based on an hourly amount; you may use the following formulas to compute hourly benefits. Please be advised that examples are provided only to demonstrate how the formulas are used.

Annual Calculation: The annual calculation is based on 2080 hours per year (40hrs x 52 weeks per year)

Formula: Employee's Basic Hourly Rate x Number of Benefit Hours (8 Hrs a Day x Number of Days) divided by 2080

Annual Hours.

Example: At \$20/Hr, with 80 vacation hours a year, the hourly rate would calculate as follows:

$\$20 \times 80 \text{ Hrs} = \$1,600$ divided by 2,080 hours per year = \$.77

Fringe Benefit Hourly Amount: \$.77

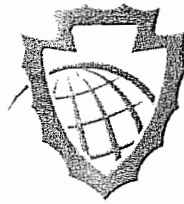
Monthly Calculation: The monthly calculation factor 173.33 is based on 2080 hours per year divided by 12 months.

Formula: Monthly Benefit Plan Contribution divided by 173.33

Example: If employer pays \$200/month for a medical benefit, the monthly hourly rate calculates as follows:

A monthly plan contribution of \$200 divided by 173.33 = \$1.15

Fringe Benefit hourly amount: \$1.15



AUTHORIZATION FOR PAYROLL DEDUCTION(S)

PRIME CONTRACTOR		SUBCONTRACTOR	
PROJECT NAME:		PROJECT CODE:	
COMPANY – CONTRACTOR NAME:			
EMPLOYEE NAME:		EMPLOYEE #:	

MUST be completed and signed by the employee who has "OTHER/GARNISH" deduction(s) subtracted from his/her payroll. Deduction types include: Alimony, Child Support, other Court-Ordered Deductions or Garnishments, Uniforms, 401K, Loans, Advance Paybacks, or Insurance, etc. This form is to be submitted before the first Certified Payroll reflecting the deduction(s). ALL "Other/Garnish" deductions must be accompanied by supporting documentation.

DEDUCTION TYPE:	EXPLANATION FOR DEDUCTION(S):	WEEKLY AMOUNT:

I, _____, HEREBY AUTHORIZE

(PRINT EMPLOYEE NAME)

(COMPANY - CONTRACTOR NAME)

TO MAKE THE ABOVE LISTED DEDUCTION(S) FROM MY PAYROLL CHECK. IT IS UNDERSTOOD THAT THESE DEDUCTIONS ARE IN THE INTEREST OF THE EMPLOYEE AND NOT A CONDITION OF EMPLOYMENT, OR A DIRECT OR INDIRECT FINANCIAL BENEFIT ACCRUING TO THE EMPLOYER, AND NOT OTHERWISE FORBIDDEN BY LAW.

EMPLOYEE SIGNATURE _____

DATE _____

CONTRACTOR SIGNATURE _____

DATE _____

YUCCA VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Council
From: Curtis Yakimow, Administrative Services Director
Stefanie Ritter, Museum Program Coordinator
Date: June 10, 2014
For Commission Meeting: June 23, 2014

Subject: Hi Desert Nature Museum Contract Registrar End of Service Report

Prior Council Review: The Town's Parks, Recreation and Cultural Commission previously recommended to the Town Council the appointment of a Museum Registrar on a contract basis to perform related registrar services. The Town Council subsequently approved a related professional services agreement in the fall of 2013.

Recommendation: Receive and file the End of Service Report related to the professional services contract for Museum Registrar activities.

Order of Procedure:

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

Discussion:

Attached for the Council's review is the End of Service Report (EOS) provided by the Town's contract Museum Registrar, which signifies the conclusion of professional services provided to the Hi-Desert Nature Museum.

Over the past eight months, the contract Museum Registrar has undertaken various tasks for the Hi-Desert Nature Museum, which have allowed the museum to remain accountable for its collections and associated proceedings in accordance with standards and best practices recommended by the Town of Yucca Valley, as well as the American Alliance of Museums.

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

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

The attached EOS report summarizes the activities performed by the contract Museum Registrar, and lists deliverables provided to the contract manager upon completion of each task. Accompanying the report are two of the principle listed deliverables—the Collections Management Policy, and the Collections Management Procedures Manual.

Financial Impact: The initial award of contract was for a not to exceed amount of \$25,000. Total costs incurred under the contract were \$24,640. This cost was accommodated by the FY 2013-14 amended budget.

Alternatives: None recommended.

Attachment: End of Service Report
Hi-Desert Nature Museum Collections Management Policy
Hi-Desert Nature Museum Collections Management Procedures Manual

End of Services Report

Hi-Desert Nature Museum Professional Services

Summary of Services:

- **Task:** *Museum/Collections Records*
Status: Complete
Amount of Time to Complete: 120 hours
Deliverable: Museum Records Finding Aid (refer to Attachment 1)

Museum records (acquisition, loan, deaccession and miscellaneous records, including old catalog cards) have been relocated to Registrar's office and organized to increase functionality and accessibility. In the event that the museum does not have a regular Registrar in place, Ms. Cantu has also provided a written "Finding Aid," that provides a general description of the records' current arrangement and organization. The document serves as added support for museum employees who wish to navigate and maintain the arrangement. The Finding Aid will remain available in the Registrar's Office, where records are located, as well as on the museum's network drive for convenience. The projected amount of hours for the completion of this task was 120 hours. Ms. Cantu was able to complete the task on schedule.

- **Task:** *Collections Room*
Status: Complete
Amount of Time to Complete: 40 hours
Deliverable: photo-documentation of collections room (refer to Attachment 2)

The *Museum Collections Room* and other storage areas have been cleaned and reorganized to enhance the security of objects in the permanent collection and provide workable area for employees to carry on collections related tasks. Ms. Cantu has removed and relocated all items not belonging to the museum's permanent collection, recovering storage space for objects that had not been previously assigned a permanent location. Ms. Cantu has also compiled and designated a specific area for collections supplies, and education/reference materials. The projected amount of hours for the completion of this task was 80 hours. Ms. Cantu has completed the task in 40 hours, ahead of the projected schedule.

- **Task:** *Collections Management Policy*
Status: Complete
Amount of Time to Complete: 80 hours
Deliverable: Collections Management Policy (refer to Attachment 3)

Standard museum practice dictates that Collections Management Policies remain current through annual review. The Hi-Desert Nature Museum had been managing its collections in accordance with policies last approved in 1993, nearly twenty-one years

ago. Several documents have since been drafted in attempt to revise 1993's Collections Management Policy, but were never fully executed and/or enacted for reasons unknown. Since 1993, the Hi-Desert Nature Museum's branding, facility, staffing and budgeting have thus undergone change, and in effect so has the museum's capacity to manage its collections. As part of the professional services provided to the museum, Ms. Cantu was responsible for preparing an updated Collections Management Policy for the year of 2014. The process involved reviewing preceding Collections Management Policies, and compiling new and previously written material into a newly-formatted document. The finished product was reviewed and approved by the Parks, Recreation, and Cultural Commission on February 11, 2014. The projected amount of hours delegated toward the completion of this task was 80 hours. Ms. Cantu has completed the task on schedule.

- **Task:** *Collections Management Procedures Manual*
Status: Complete
Amount of Time to Complete: 40 hours
Deliverable: Collections Management Procedures Manual (refer to Attachment 4)

Following the approval of the updated Collections Management Policy, Ms. Cantu was asked to follow-up with a Procedures Manual providing step-by-step guidelines on how to carry out basic acquisition, deaccession and loan-related transactions. The Collections Procedure Manual is to be read in conjunction with the Collections Management Policy, and both are intended to instill continuity in collections-related functions. Both will be kept as a resource for museum staff, should a Museum Registrar be unavailable. Total hours spent on drafting the Collections Management Procedure amounted to 40 hours. Ms. Cantu has completed the task on ahead of projected schedule.

- **Task:** *Inventory*
Concentration: *Education/Reference Collection*
Status: Complete
Amount of Time to Complete: 265 hours
Deliverable: Inventory list (refer to Attachment 5 for an excerpt of the list)

The projected wall-to-wall inventory of the Hi-Desert Nature Museum's collections began with initial phase of an inventory of the museum's education/reference collection, including the museum's library. The primary purpose for this inventory was not only to document items within the collection, but to uncover and identify any permanent collections items that may have been misplaced at one point in time. Education/reference items were primarily stored in the Animal Feeding Office, the Room 3 office, the Kidz Corner, and storage areas under the museum's dioramas. Inventoried items were entered into a searchable Excel worksheet, describing each item, as well as noting its present location and condition. Ms. Cantu inventoried a total of 2,435 items, 217 of which were identified as misplaced permanent collection items. As a result, Ms. Cantu was able to relocate permanent collections items to their proper storage environment. Total hours spent on planning and executing the education/reference inventory amounted to approximately 265 hours.

- **Task:** *Miscellaneous*

Status: Complete

Deliverable: modernized forms (refer to Attachment 6 for a sampling of forms)

As Ms. Cantu has completed some of her delegated tasks ahead of projected schedule, she has taken on some additional tasks and responsibilities for the museum, per the request and/or discretion of Contract Officer. Ms. Cantu has been responsible for the general oversight of acquisition and loan transactions, and care of objects on display and in storage. Ms. Cantu has also taken the opportunity to modernize some of the Hi-Desert Nature Museum's registration forms, and revise their terms and conditions. She has even been involved in the creation of the museum's reference library and updating special permits for the exhibition/possession of taxidermy animals.

COLLECTIONS MANAGEMENT POLICY



2014

DRAFT

TABLE OF CONTENTS

1. OVERVIEW.....	3
1.1 Introduction	
1.2 Statement of Purpose	
1.3 Scope of Collections	
1.4 Statement of Authority	
2. LEGAL AND ETHICAL STANDARDS.....	6
2.1 Legal Standards	
2.2 Ethical Standards	
2.3 Non-Capitalization of Collections	
2.4 Appraising Donations	
3. COLLECTIONS CARE AND MAINTENANCE.....	8
3.1 Storage and Display	
3.2 Conservation	
3.3 Record Keeping and Inventories	
4. USE AND ACCESS.....	10
4.1 Use of Collections	
4.2 Copyright	
4.3 Access to Collections and Information Systems	
5. ACQUISITIONS.....	13
5.1 Acquisitions Overview	
5.2 Education Collection Acquisitions	
5.3 Live Animal Collection Acquisitions	
5.4 Accession of Objects for Permanent Collection	
5.5 Acquisition for Sale or Trade	
6. DEACCESSIONS.....	16
6.1 Deaccessions Overview	
6.2 Deaccessioning Objects from Permanent Collection	
6.3 Disposal	
6.4 Deaccessioning Process	
7. LOANS.....	19
7.1 Loans Overview	
7.2 Incoming Loans	
7.3 Outgoing Loans	
8. UNCLAIMED LOANS AND FOUND OBJECTS.....	21
8.1 Old (Unclaimed) Loans	
8.2 Undocumented and Found in Collection	
9. APPENDICES.....	23
Appendix A: Laws, Regulations, and Guidelines	
Appendix B: Town of Yucca Valley Code of Ethics	

Appendix C: America Association of Museums (AAM) Code of Ethics for Museums

1. OVERVIEW

1.1 INTRODUCTION

This document, formally known as the Collections Management Policy establishes and documents the Hi-Desert Nature Museum's policies concerning all collections related activities including the development, acquisition, management, and use of its collections. The Collections Management Policy, hereafter referred to as CMP, deals with all major aspects of collections stewardship, which concerns the legal and ethical responsibilities the museum has in managing objects that are entrusted to the care and authority of the Hi-Desert Nature Museum, hereafter referred to as HDNM, and the Town of Yucca Valley under which the museum operates.

A comprehensive CMP helps to facilitate adherence to the professional standards and best practices recommended by the Town of Yucca Valley, as well as the American Alliance of Museums. The CMP should stand as a guide for respective boards, staff, volunteers and contractors as they perform their individual and collective duties for HDNM. This CMP is also the basis for a separate Collection Procedures Manual which provides an action plan for the policies stated hereafter. Both documents will be reviewed annually and revised by the Museum Registrar as necessary, with the approval of the Parks, Recreation, and Cultural Commission.

1.2 STATEMENT OF PURPOSE

Mission Statement

The Hi-Desert Nature Museum is dedicated to the process of education by exploring the natural, artistic, and cultural heritage of the Morongo Basin and High Desert. The Museum seeks to inspire wonder, discovery, understanding, and responsibility in its community and visitors through exhibitions, programs and collections in the arts, history, and natural sciences.

Vision Statement

To support and advance the Hi-Desert Nature Museum's mission, the museum will provide an educational and cultural center for residents and visitors to explore the unique and diverse natural, cultural, and artistic world of the Morongo Basin and the High Desert region of California. The Museum is dedicated to public service and shares a commitment to provide services and opportunities to its constituents.

1.3 SCOPE OF COLLECTIONS

HDNM's mission provides the focus and direction for all collections activities. HDNM collections are here defined as the biological, geological, anthropological, and historical objects acquired because of their scientific and historical significance, and educational value. As used in this document, the term, *object* shall pertain to all effects including, but not restricted to live and preserved specimens, artifacts, both physical and intellectual works of art, and archival and library media, such as photographs, documents, books and oral histories.

HDNM acquires three types of collections: the *permanent collection*, the utility, education, research/reference collection (simply known as the *education collection*), and the *live animal collection*. The way in and level of which HDNM manages and cares for these collections is dependent upon their use and purpose in museum related activities.

Permanent Collection

Objects in the permanent collection are acquired because of their documentary representation of the natural, artistic, and cultural heritage of the Morongo Basin and High Desert. As held in public trust, HDNM commits to the long-term care and preservation of these objects. They must be formally accessioned and can only be removed from the collection through a formal deaccessioning process. They are primarily used for exhibition, and research purposes. Policies further declared in this CMP are primarily binding to objects in this collection.

Education Collection

Objects in the education collection are acquired for the purposes and support of research, exhibitions and programming, and less for provenance and documentation. Aside from applying some general care or maintenance to these objects, HDNM allows them to live out their ordinary lives through continual use and handling. Objects in this collection may be used by staff and the public as general reference material, serve to illustrate talks and demonstrations, or provide visitors and program participants' hands-on knowledge. Due to the nature of their use and handling, objects do not have to undergo formal accession, and may be removed from the collection at any time without formal deaccession or documentation. Care and maintenance for these objects will be at the discretion of HDNM's education and programming staff.

Live Animal Collection

The live animal collection is comprised of living, non-releasable native wildlife that HDNM has acquired for rehabilitation, and exhibit and programming purposes. HDNM commits to the life-long care of each animal by ensuring a suitable and stable living environment while enhancing the animal's quality of life. Per legal obligations of collecting and exhibiting wildlife, animals in the live animal collection are documented and cataloged like objects in the permanent collection. However, they do not need to undergo formal accession. When their term of life has expired or the museum is no longer able to accommodate the animal's living arrangement, they are documented as being removed from the collection, but are not required to undergo formal deaccession. The acquisition, care and removal of animals fall under the purview of the Museum Biologist.

1.4 STATEMENT OF AUTHORITY

Governance

HDNM is a component of the Community Services Department of the Town of Yucca Valley, located in Yucca Valley, California. The Town of Yucca Valley has legal, fiscal, and an ethical responsibility for the collections for which HDNM holds title.

Councils and Commissions

The Town of Yucca Valley is governed by a five-member Town Council, which is elected by popular vote and charged with the administration of the Town of Yucca Valley government. This

elected Council appoints a five-member Parks, Recreation and Cultural Commission (PRCC) to oversee the general operation of HDNM, and to serve as the governing board for the acquisitions, deaccessions, disposals and collection policies amendments, under the general supervision of the Town Council.

Museum Supervisor

The Museum Supervisor is responsible for the overall administration and operation of HDNM. With respect to collections, he/she acts as the direct intermediary between the Town of Yucca Valley's respective boards and the museum, and relays and/or updates these boards on collections-related matters. In the event that there is not a Registrar in place at HDNM, the Museum Supervisor is responsible for the oversight of collections and related functions.

Museum Registrar

The Museum Registrar's primary responsibilities are to develop and maintain all records pertaining to HDNM's permanent collections and loans, and oversee the proper care, use, handling, transport and storage for those collections. The Museum Registrar also develops, updates, and implements specific policies and procedures relating to the management of records and objects, under the general supervision of the Museum Supervisor and the approval of PRCC.

Museum Biologist

The Museum Biologist acts as curator of live collections and his/her primary responsibility is to ensure the integrity of the live animal collections by developing and overseeing the proper care and handling of HDNM animals. With general direction from the Museum Registrar and/or Museum Supervisor, the Museum Biologist will also develop and maintain records pertaining to the live animals in the collections. This also includes applying for and maintaining suitable permits and licensing to obtain and exhibit live animal specimens.

2. LEGAL AND ETHICAL STANDARDS

2.1 LEGAL STANDARDS

HDNM manages its collections in such a way as to meet its fiduciary obligations as a municipal organization operated, and thus governed by the Town of Yucca Valley and all of its statutes. HDNM, in policy and practice, shall conduct all collections activities in accordance with all applicable local, state, federal, and international laws, regulations and guidelines. The information that is mentioned below should be used as a starting point and not in any way be considered exhaustive.

HDNM observes all wildlife regulations addressed in the Convention on International Trade in Threatened and Endangered Species of Wild Fauna and Flora, and subscribes to the principles and recommendations of the UNESCO Conventions Concerning the Protection of the Cultural Heritage (UNESCO, 1970) and the Native American Graves Protection and Repatriation Act (NAGPRA, 1990). Refer to Appendix A for a more extensive list of laws, regulations, and guidelines.

2.2 ETHICAL STANDARDS

As a collecting institution, HDNM's prime responsibilities are concerned with guaranteeing that objects in its custody are maintained in the public trust—that they are “lawfully held, protected, secure, unencumbered, cared for, and preserved” (AAM, 1990). HDNM will manage its collection in accordance with ethic statements of the American Association of Museums (AAM) and all other statements of professional standards and ethics that pertain to its mission and activities.

Activities that conflict with roles and responsibilities of board or staff members, or cause them to favor outside interests over those of HDNM and/or the Town of Yucca Valley must be avoided. No staff, volunteer, contractor, or board member shall use his/her position at HDNM or the Town of Yucca Valley for personal gain or benefit at the expense of HDNM, its mission, its reputation, and/or the community it serves. HDNM requires its board members, staff, contractors and volunteers to conduct themselves in accordance with all applicable standards, policies and procedures stated in the Town of Yucca Valley's Employee Handbook, in conjunction with those set forth by AAM. Refer to Appendices B and C.

2.3 NON-CAPITALIZATION OF COLLECTIONS

HDNM will not capitalize or treat collections as financial assets in any way. Any revenues gained from sale of its collections shall be used for the sole purpose of direct care and acquisition of collections. In addition, under no circumstances should be HDNM's collections be considered as capital assets or used as collateral in any financial transaction.

2.4 APPRAISING DONATIONS

No staff, board member, interns or volunteer of HDNM should provide appraisals for any purpose. Under current Internal Revenue Service (IRS) guidelines, HDNM cannot act as a qualified appraiser because of the inherent conflict of interest. HDNM may suggest several qualified appraisers, but should not make arrangements for the appraisal and cannot pay for the appraisal. HDNM staff may provide estimations on cost of replacement for insurance purposes only. These estimates will be based on fair market valuations that are publicly known.

3. COLLECTIONS CARE AND MAINTENANCE

Acquired and loaned objects shall be preserved under a system of documentation, maintenance, and preventive conservation in accordance with the highest professional standards and practices presented by the registration, collections management and conservation communities.

3.1 STORAGE AND DISPLAY

Permanent Collection

When not on exhibit, objects belonging to the permanent collection will be securely stowed in areas designated for collections only. Such areas will be climate controlled, thus regulating temperature, relative humidity, and lighting exposure to the objects. Currently, HDNM has one area on its premises designated to the permanent collection; this area is referred to as the Collections Room. Items stowed in the Collections Room must be housed in appropriate archival storage materials, otherwise they run the risk of rapid deterioration or becoming damaged.

When on exhibition, objects on display must remain protected in, under or behind protective barriers or casings to prevent direct access to the collections, unless other means of display can be justified by the Museum Registrar.

Education Collection

All education objects will be afforded the varying levels of care consistent with their status and use at HDNM. Nevertheless, objects should be handled with care to maintain their long and efficient usefulness. To reduce confusion, HDNM staff should refrain from storing education objects in the Collections Room with permanent collections. Objects may be stored, used and/or exhibited in non-climate controlled areas.

Live Animal Collection

Animals belonging to HDNM's live animal collection will be housed and displayed in cages, tanks, kennels, or similar receptacles that are to be located in the animal exhibition area of the museum.

Environmental Conditions and Pest Management

HDNM staff must remain mindful of the potential risks that having objects on display may incur. HDNM's facility, nor cases, are equipped to accommodate fully controlled environments for collections on display in exhibition areas. Objects on display run the risk of being exposed to an array of light sources and fluctuations in temperatures and relative humidity, which could ultimately speed up the process of deterioration for most objects. HDNM staff must take this into consideration and help mitigate potential damage to collections by regulating light, temperature, and humidity settings throughout the museum. The Museum Registrar and trained staff will be responsible for monitoring exhibit areas, rooms and cases on a daily basis to ensure that objects are not at extreme risk. Findings will be recorded and kept on file in the Museum Registrar's office.

The Museum Registrar and trained staff, interns and volunteers will also place and monitor traps throughout areas where collections are stored and displayed. These traps will be monitored monthly when pest activity is normal and more frequently if persistent infestations are suspected or confirmed. Findings will be recorded and kept on file in the Museum Registrar's office.

Security

Efforts to protect HDNM collections against theft and vandalism during business hours will be delineated through constant staff supervision of exhibit and collections storage areas.

Collections holding areas, including exhibit cases, must remain locked at all times when unsupervised by the Museum Supervisor or Museum Registrar.

HDNM will remain armed with anti-theft security alarm system during non-business hours.

Although not all HDNM staff, contractors, interns and volunteers will be working directly with collections, it is vital that they be required to undergo a Collections Handling seminar within the first two months of employment. These individuals will be trained to recognize suspicious activities in regard to collections and be responsible for notifying the Museum Supervisor and/or the Museum Registrar in the event of witnessing ill-treatment toward objects stowed or on display.

3.2 CONSERVATION

As HDNM does not employ a trained Conservator, the Museum Registrar and trained staff will only provide preventative conservation, such as proper mounts for support of fragile objects and noninvasive cleaning. Staff will not attempt irreversible repairs or restorative work. HDNM staff will consult or contract with a trained Conservator for restorative services.

3.3 RECORD KEEPING AND INVENTORIES

HDNM's collections records contain both registration and curatorial information. Curatorial records provide a broad body of information that establishes an object's proper place and importance within its cultural, historical and/or scientific sphere. Whereas, records that are associated with HDNM's registration functions include donor and lender contact information, as well as information pertaining to the legal status of objects, their value, and their movement and care while under the control of HDNM.

HDNM will continue to create and maintain complete and accurate collections records, since official documentation is critical to the fair and thorough approach needed to remain accountable. Principal responsibility for creating and maintain object records lies with the Museum Registrar.

Complete inventories of HDNM's records and collections should be conducted, at minimum, every five years. Spot inventories will be conducted as needed, determined by the Museum Registrar.

4. USE AND ACCESS

4.1 USE OF COLLECTIONS

General Use of Objects

Objects acquired through gifts, bequests, strategic purchases, transfers or exchanges will be free of limiting conditions and restrictions concerning their fair use within the normal scope of educational, archival and exhibition activities of HDNM. Under the oversight of the Museum Registrar, objects acquired may be exhibited, loaned to like institutions, preserved, conserved, stored, studied, or otherwise utilized in the best interests of the objects and HDNM.

Educational Use of Objects

At the discretion of the Museum Supervisor, collections may be made available for educational movies, filmstrips, electronic media, or still photography for scholarly publications.

Commercial Use of Objects

At the discretion of the Museum Supervisor, objects or their images may be made available for reproduction or replication for commercial use. The Museum Registrar shall be the judge of quality control, selection, and marketing with the approval of the Museum Supervisor. Such commercial use shall be for the benefit of the collections and consistent with this CMP. Copyright for reproduction of collection objects will remain the property of HDNM.

4.2 COPYRIGHT

All copyright and associated rights are transferred to HDNM when the transfer of title for the object is completed. Use of any donated artifact, photographic image, or intellectual work, are to be credited to the "Hi-Desert Nature Museum."

Where use of copyright-protected materials beyond those above enumerated rights is desired by HDNM, specific application for exclusive or non-exclusive license will be made to the holder of copyright. HDNM staff will apply to the holder of copyright, for example, when it wishes to use images of copyright protected materials.

4.3 ACCESS TO COLLECTIONS AND INFORMATION SYSTEMS

Public Access

The public will be afforded access to collection through exhibits, educational programs, and HDNM's website. However, members of the public are not permitted to handle objects from the permanent and live animal collections.

Objects from the permanent and live animal collections will only be accessible for hands-on research and study to responsible investigators, subject to procedures necessary to safeguard the objects, and to restrictions imposed by limitations of exhibition requirement, availability of study space and facilities, and availability of appropriate museum staff. Researchers must be accompanied by the Museum Supervisor or Museum Registrar at all times while in the presence of the object when on HDNM premises.

Items may not leave HDNM premises without the consent of the Museum Registrar and proper loan documentation.

Access to collections or collection records can be denied if such access may create a substantial risk of harm, theft, or destruction of such objects or of the area or place where the objects originated.

Staff Access

Daily and continual access to the permanent collection and storage facilities is limited to the Museum Supervisor and Museum Registrar who are directly responsible for the protection of the objects. Access to the live animals is limited to the Museum Biologist, and trained staff and volunteers. All other staff, interns, board members, volunteers and contract employees will gain access through one of these qualified members.

Permission of a HDNM staff to remove any object from the collections must be approved by the Museum Registrar. Should the Museum Supervisor need to remove any object, he or she will have to gain the approval from the Museum Registrar and vice versa. Detailed procedures and proper forms for the removal of an item from collections are noted in the Collection Procedures Manual.

Furthermore, no HDNM or Town of Yucca Valley staff shall have access outside of normal business hours to any secure areas related to the storage, procession, administration and servicing of collections, without the prior approval of the Museum Supervisor.

The doors to collections storage areas and offices will remain locked when unsupervised by the Museum Registrar or Museum Supervisor. Only the Museum Registrar and the Museum Supervisor will have access to keys for collections storage areas.

Access to Records and Information Systems

HDNM, as a municipal organization associated with local government, will comply with all applicable federal and California state legislation and restrictions regarding both the protection and release of documented information. HDNM records may be subject to legislation enacted by the Federal Freedom of Information Act (enacted 1966), the Federal Privacy Act (enacted 1974), the Federal Sunshine Act (enacted 1976), and the California Public Records Act (enacted 1968).

Only the Museum Supervisor and Museum Registrar will have direct access to and are allowed to handle original records and documents. Inquisitions requiring the use of these records and/or documents will be made directly to the Museum Registrar and/or Museum Supervisor. Both the Museum Supervisor and Museum Registrar are responsible for carefully reviewing requests and determining whether all of the material can be released. When required, HDNM may seek legal advice regarding this matter.

While the Museum Registrar is responsible for managing and maintaining records on HDNM's electronic database, Past Perfect, HDNM staff, volunteers, interns and contractors will have permitted access to Past Perfect. These individuals may use Past Perfect for basic curatorial

inquires. Nevertheless, data may not be edited or modified. Furthermore, like the policies stated for original records, requests for information must be made at the discretion of the Museum Supervisor and/or Museum Registrar.

5. ACQUISITIONS

5.1 ACQUISITIONS OVERVIEW

HDNM's collections should be built in an active and focused manner continuously striving to support its mission. Specific acquisition strategies will be employed to strengthen and expand its permanent, live animal and education collections in areas HDNM deems weak, limited, or missing entirely. HDNM will build its collections through gifts (donations, bequests, and trusts), strategic purchases, transfers or exchanges, and bargain (donative) sales.

Objects brought to HDNM will be subject to initial evaluation in order to determine whether they qualify as potential acquisitions for either of HDNM's collections. Objects will not be accepted by HDNM staff unless:

1. the objects are consistent with the purposes and activities of HDNM;
2. HDNM can provide for the storage, protection, and preservation of the objects under conditions that ensure their availability in keeping with professional standards of museum preservation;
3. it is intended that the objects shall remain in the collections as long as they remain useful for the purposes of HDNM;
4. HDNM can acquire valid and legal title to them effective in the United States and in the country of origin, if different; In doubtful cases, staff will abide by the advice of the Town of Yucca Valley's legal counsel;
5. HDNM can be assured that they were not collected or recovered under circumstances that would support or encourage irresponsible damage to, or destruction of cultural sites and monuments, desert ecology, or human burial places; and,
6. free-and-clear title, without restrictions as to use, reproduction, or future disposition, can be obtained, and a legal instrument of conveyance, setting forth an adequate description of the objects and the precise conditions of transfer, signed by the donor or seller and by an authorized HDNM representative, can be placed on file with the Museum Registrar. (If, under rare conditions, objects are accepted with restrictions or limitations, then such conditions must be approved by the Museum Supervisor and PRCC, and must be stated clearly in the instrument of conveyance, which is to be made part of the accession records for the objects. This policy shall be strictly observed by HDNM.)
7. the objects are free of hazardous chemicals or materials

5.2 EDUCATION COLLECTION ACQUISITIONS

Not all objects are recommended for HDNM's permanent collections. HDNM may wish to acquire objects for research, exhibit, or education purposes that HDNM does not intend to hold in its collections indefinitely. For instance, HDNM may intend to subject material to destructive analysis or to use for educational or exhibit purposes with the expectation that the material will deteriorate through use and become unsuitable for continued stewardship. HDNM may accept any such material without accessioning it into its permanent collections, provided that appropriate documentation shall be prepared by the Museum Registrar formally accepting the material on behalf of HDNM.

Library material that is not unusually rare or valuable (either economically or for the long-term purposes of HDNM) may be accepted by HDNM as part of the education collection. Such library material may be disposed of in accordance with standard practice for research libraries, provided that complete records are kept of all transactions. Unusually rare or valuable library material will be accessioned into the HDNM's collections in the same manner as other artifacts.

5.3 LIVE ANIMAL COLLECTION ACQUISITIONS

HDNM will accept native fauna for research, exhibit, and education purposes. However, activities regarding the intake of museum animals will be at the discretion and oversight of the Museum Biologist. The Museum Biologist will initiate, and thus carry out appropriate means to legally obtain and retain animals.

5.4 ACCESSION OF OBJECTS FOR PERMANENT COLLECTIONS

Objects recommended for HDNM's permanent collection must undergo and complete the formal accession process. Guiding principals and policies regarding the formal accession process are as follows:

Temporary Custody Receipt

The first step in the donation process involves completing a Temporary Custody Receipt, specified for acquisition. The Temporary Custody Receipt will list all of the objects being offered and states clearly the conditions under which these objects are being left in HDNM's custody. It officially gives HDNM permission to consider the artifacts listed thereon for HDNM's permanent collection. This form requires a signature of both the owner/donor and the staff member receiving the donation on behalf of HDNM.

Parks, Recreation, and Cultural Commission (PRCC) Review

The Museum Supervisor will prepare a monthly staff report for the Town of Yucca Valley's Parks, Recreation, and Cultural Commission (PRCC) to introduce recommended accessions. PRCC determines whether offered objects will be accepted for the museum's permanent collection, transferred to other institutions, returned to donors, or otherwise disposed of.

Objects are reviewed by the following criteria:

1. consistent with HDNM's mission and purpose;
2. level of provenance or documentation;
3. duplication;
4. physical space required to care for, store, and exhibit;
5. need for excessive care and/or conservation due to fragility or damage; and,
6. the potential hazard or risk to other artifacts in the collections and/or to people.

Deed of Gift

The Museum Registrar is responsible for preparing and issuing a Deed of Gift to donors whose objects have been accepted for accession by PRCC. In order for the transfer of ownership to become complete, the Deed of Gift must include the signatures of the Museum Supervisor and Donor.

If the Deed is not signed by the Donor within 90 days after the object(s) listed thereon have been accepted by PRCC, objects listed will automatically and completely become the property of HDNM. According to the Terms and Conditions listed on the Deed, no liability will accrue to HDNM or its agents or staff if reasonable attempt have been made to contact the Donor for his/her signature. The Museum Registrar will only make attempts at 30 and 60 days to remind the donor after the original deed has been presented.

Declined Objects

Objects that are not accepted for accession by PRCC are returned to the Donor, sold to benefit HDNM, transferred to another institution or otherwise disposed of according to the provisions provided by the Donor on the Temporary Custody Receipt. Objects not accessioned but are no longer wanted by their Donors may not be acquired by Town of Yucca Valley or HDNM staff, interns, volunteers, or board members. Town of Yucca Valley and HDNM representatives may not directly and/or personally gain benefit from object donations, deaccessions, or disposals.

5.5 ACQUISITION FOR SALE OR TRADE

HDNM may receive objects not considered appropriate for existing collections for the specific purpose of sale or trade. Objects accepted specifically for sale or trade will be recorded as incoming and outgoing, but will remain outside of all regular collections procedures.

6. DEACCESSIONS

6.1 DEACCESSIONS OVERVIEW

HDNM is committed to the continual strengthening of its collections in order to further advance its mission and vision. Under strictly controlled circumstances, HDNM can permanently remove an accessioned object from its permanent collection through a process known as deaccessioning.

Accessioned objects in the collections may be deaccessioned only with the approval of the Museum Supervisor and upon the subsequent approval of PRCC in accordance with policies and guidelines approved in this CMP. Deaccession policies and guidelines shall be consistent with the prevailing legal and ethical constraints.

The Museum Registrar is responsible for record keeping during the deaccessioning process, since official documentation is critical to the fair and thorough approach needed to remain accountable.

6.2 DEACCESSIONING OBJECTS FROM PERMANENT COLLECTION

Objects from the permanent collection will be retained permanently if they continue to be relevant and useful to the purposes and activities of HDNM. Deaccessioning of objects may only be considered when these conditions no longer prevail.

Objects may only be removed from HDNM permanent collection based on the following criteria:

1. *Unrelated*: The object is unrelated to HDNM's Mission statement.
2. *Duplicate*: The object is a duplicate and will not be used for display or research.
3. *Damage*: The object is irretrievably damaged; deteriorated beyond usefulness.
4. *Exchange*: The object is part of an exchange, by gift or sale agreement.
5. *Quality*: The object is not museum quality.
6. *Proper Care*: An object may be removed if HDNM is no longer able to fulfill its obligation to provide proper storage, maintenance and preservation, and if HDNM can designate another institution capable of fulfilling those obligations to the object.
7. *Restrictions*: The object is subject to contractual donor restrictions that HDNM is no longer able to meet.

8. *Illegal*: The object is determined to have been acquired illegally or unethically.
9. *Mandate*: An object may be removed if object is subject to a legislative mandate, e.g., repatriation.
10. *Hazardous*: The object is considered hazardous and unsafe to preserve and/or store.

6.3 DISPOSAL

When restrictions do not apply, HDNM is free to dispose of objects that have ceased to serve a useful purpose to the museum, subject to criteria listed above.

In determining an appropriate manner of which to dispose of an object, the Museum Supervisor, along with the Museum Registrar, must consider which manner would be in the best interests of HDNM, the public it serves, the public trust it represents in maintaining the collections, and the scholarly or cultural communities of which it forms a part. The Museum Supervisor must then provide a recommendation of disposition for PRCC, at and/or during the time PRCC will review the object for deaccession. PRCC must approve the manner of disposition in order for the HDNM staff to implement it.

In determining a manner of disposition, consideration will be given to:

1. *transferring* objects to HDNM's education collection, with the understanding that objects will be subject to physical deterioration or destruction over time;
2. lawfully *repatriating* objects that were part of a significant historical, cultural, or scientific heritage to communities, states, or nations from which they were originally removed;
3. *donating* objects to another museum or non-profit institution wherein they may serve the purpose for which they initially were acquired;
4. *exchanging* objects with another museum or non-profit institution for objects of equal monetary and historical value;
5. *selling* objects to another museum or non-profit institution, whereby proceeds will be spent to purchase new objects for the permanent collections;
6. *selling* objects at public auction, where objects must be advertised in the public marketplace in a manner that will best protect the interests, objectives, and legal status of HDNM. Objects will not be given or sold privately to employees of the institution, to officers, to members of the governing authority, or to their representatives; and

7. *destroying/discarding* objects that may have deteriorated due to inherent vice, natural disaster, vandalism, accident, or other causes, and cannot be of any practical use. This is also the best option for objects that may be considered hazardous, such as those containing drugs, chemicals, explosives, or asbestos. Proper regulatory agencies or experts must be contacted to ensure proper disposal.

6.4 DEACCESSIONING PROCESS

Initial Evaluation

When an object from HDNM's permanent collection has met one or more of the criteria listed above for deaccession, the Museum Supervisor, along with the Museum Registrar will review the paper and electronic records for the object to confirm that all documentation is complete and accurate. The Museum Registrar must then complete and document a physical inspection of the object and further establish an appropriate means of disposal.

Verification of Legal Title

Before the deaccession and disposal of any objects from the permanent collection can take place, reasonable effort must be made to ascertain that HDNM is free to do so. The Museum Registrar must check records to ascertain if any restrictions exist from the original gift, bequest, or purchase agreement.

Where restrictions on the objects under question are found to apply, the HDNM shall act as follows:

1. Mandatory restrictions shall be strictly observed unless deviation from their terms is authorized by a court of competent jurisdiction; and,
2. If there is any question as to the intent or force of restrictions, HDNM shall seek the advice of legal counsel. In particular, legal council might review any copyright or trademark restrictions, since those rights will not transfer to a new owner.

Parks, Recreation, Cultural Commission (PRCC) Review

The Museum Supervisor recommend objects for deaccession in a monthly staff report for the Town of Yucca Valley's Parks, Recreation, and Cultural Commission (PRCC) to review. If PRCC approves of the terms of which the object are to be deaccessioned, the Museum Registrar may proceed with the proper documentation and the disposal. A record of the conditions and circumstances under which objects are deaccessioned and disposed of shall be made and retained as part of the HDNM's permanent register.

If PRCC does not approve of the terms recommended for deaccession, the Museum Supervisor may elect other options listed in this CMP. If PRCC rejects recommendations for deaccession and/or cannot come to a consensus for object disposal, objects will not be removed from the permanent collection, and HDNM will continue to be liable for them.

7. LOANS

7.1 LOANS OVERVIEW

Lending and borrowing objects for exhibition, research, and educational purposes is essential in making HDNM's collections, as well as those of other persons and organizations assessable to the widest possible audience.

All objects on loan to HDNM will be afforded the same level of care and attention as that afforded to objects in its permanent collection. The detail of all incoming and outgoing loans are specified on the Loan Agreements issued by the Museum Registrar, and will be followed unless changes are agreed to in writing by both parties.

All loan records will be retained permanently.

7.2 INCOMING LOANS

With the approval of the Museum Supervisor, HDNM staff may solicit incoming loans for the purposes of exhibition or research. HDNM will only accept for loan:

1. Objects that would be subject to loss and cannot be obtained through acquisition; and,
2. Objects that are required for HDNM sponsored exhibitions or related activities.

HDNM will not accept loaned objects that are known to have been collected illegally, that represents a hazard to the existing collections and/or HDNM staff, or fails to conform to local, state, or federal law (e.g. human remains, sacred material, etc.).

The terms and conditions governing incoming loans are stated on the back of the Loan Agreement to be entered into with the lender. The lender may choose to negotiate the already stated loan terms and conditions with the Museum Supervisor. However, terms and conditions may only be amended if they are still in accordance with the policies, guidelines, and professional standards set forth in this CMP, and those stated by AAM. Details of loan terms and conditions will be communicated to the Museum Registrar to ensure that all loan documentation is complete and accurate.

HDNM will not store, on behalf of other institutions or members of the public, materials and/or objects that are not required for exhibition, ongoing research or promised donation. Objects lent to HDNM on the understanding that they will ultimately be donated to the collections must be accompanied by a written binding declaration of the lender's intent to this effect. Legal and ethical acquisitions policies shall apply to all incoming loans.

Duration of Incoming Loans

Specified loan terms will be determined in accordance with the purpose for which HDNM wishes to borrow objects. Typically, objects on loan for temporary exhibit are on loan for the duration of the exhibition for which they are intended. If a Lender would like to place their object on loan for a longer period of time, the Museum Supervisor will take into consideration HDNM's capacity to intake objects for long-term care, and determine how long HDNM would like to borrow the object. Long-term loans may not exceed a period 5 years without entering a new agreement with the Lender.

The duration of a loan or loan term must be mutually agreed upon by the Museum Manager and the Lender. A loan term must be stated on the Loan Agreement at the time of signing, otherwise the agreement is null and void.

HDNM will not accommodate permanent or indefinite loans.

7.3 OUTGOING LOANS

Only with the approval of the Museum Supervisor, will HDNM make objects from its permanent collection available for loan.

Objects may be made available to qualified non-profit or government institutions for specified periods of time, provided that:

1. the object's condition is not so fragile that it would be endangered by transit or by change of environment; and
2. the object will benefit the public more through loan than by being held by HDNM.

Objects shall not be lent to individuals except under special circumstances and with the approval of the Museum Supervisor. Before lending to individuals, staff must make every effort to seek an institutional affiliation or endorsement for the person. If an affiliation is impossible to establish, then written reasons must be stated with the loan form.

Objects requested by students or associates will require faculty or institutional endorsement and will be considered the direct responsibility of the faculty member or institutional representative endorsing the request.

The borrower will sign and return the Loan Agreement prior to the requested objects being transferred to the borrower's custody. Once HDNM's Museum Supervisor signs the agreement, the loan is finalized, and the objects will be shipped or delivered.

Duration of Outgoing Loans

The maximum duration of outgoing loans shall be one year, but may be subject to renewal.

8. UNCLAIMED LOANS AND FOUND OBJECTS

8.1 OLD (UNCLAMIED) LOANS

Old loans refer to expired loans or loans of unlimited duration left unclaimed by lenders at the museum. Prudent collections management dictates that museums should pursue systematic efforts to resolve old loans, as prolonged care for such objects continue to usurp HDNM's valued resources. HDNM is guided in managing such objects per the authority of California Civil Code Section 1899-1899.11.

Per the authority of California Civil Code Section 1899-1899.11, HDNM may terminate an incoming loan if the loan is for a term of more than seven years, is for an indefinite period, or if the loan term has expired, but the property remains in the HDNM's custody.

To terminate a loan, HDNM must first attempt to contact the object's lender at his or her last known address. If HDNM has no address for the lender or does not receive proof of receipt of attempt to contact within 30 days, HDNM must publish its intention to conclude the loan at least once a week for three weeks in a major newspaper in the lender's area. Subsequently, if HDNM does not hear from the lender within three years, the lender will then legally be deemed to have donated the property to the HDNM. If the loan is for an indefinite period of time and HDNM fails to receive written contact from the lender within every 25 years, ownership of the loaned property reverts to HDNM. It is the responsibility of the lender to keep HDNM informed of changes of address or ownership of the property.

The Museum Registrar is responsible for contacting lenders and tracking their whereabouts or heirs. Given the HDNM's resources, staff will attempt to undertake a search with the utmost diligence and good faith. When required HDNM will seek legal advice.

8.2 UNDOCUMENTED AND FOUND IN COLLECTION

HDNM possesses objects with insufficient documentation to determine if they are or should be part of the permanent collection. Objects that are *Found in the Collection* (FIC) differ from unclaimed loans in that no record of past or current ownership exists.

While in HDNM's possession, FIC objects will be cared for in the same manner as objects in the permanent collection, but will be stored in a designated area of the Collections Room to avoid and limit confusion between loan and formally accessioned objects. Such objects will be labeled indicating their status, and must be tracked by the Museum Registrar.

Reasonable attempts by the Museum Registrar will be made to contact original owners. The Museum Registrar will also maintain documentation of these attempts in the accession file.

Assuming Ownership of FIC Objects

Should HDNM wish to retain ownership of an FIC object, it will be accessioned into the collection following procedures outlined for objects to be accessioned to the permanent collection. However, the object must still be noted as an FIC item. In retaining ownership of an FIC object, HDNM must recognize the possibility that the object may be claimed by the rightful owner at a later date. Only upon receiving adequate documentation proving ownership, will HDNM return the object to its rightful owner. HDNM may also seek the advice of legal counsel in such cases.

Disposal of FIC Objects

Should HDNM decided to dispose of an FIC object after making all reasonable attempts to identify its rightful owner have failed, it recognizes the risks involved, such as subsequent claims by owners and the inability to sell with a guarantee of legal title.

FIC objects will be initially evaluated by the Museum Registrar and Museum Supervisor, then recommended for removal following the deaccessioning policies and guidelines outlined for objects in permanent collections. In choosing a method of disposal, HDNM must first attempt to donate FIC objects to institutions and/or organizations whose activities are similar to those of HDNM. Such action is less likely to have repercussions for HDNM should the rightful owner make a claim. FIC objects may not be sold, since HDNM does not assume legal title of the item. Legal counsel may be consulted in any of these cases.

9. Appendices

APPENDIX A: LAWS, REGULATIONS, AND GUIDELINES

HDNM conducts all collection activities in accordance with international, national, state, and local laws, regulations, and guidelines. The information that appears in this appendix should be used as a starting point and not in any way be considered exhaustive.

I. International laws, regulations, and guidelines include but are not limited to:

- A. Protection of objects of archaeological, historical, and ethnological interest is addressed by Section 4.4 of the International Council of Museums Code of Ethics for Museums (2001) http://palimpsest.stanford.edu/icom/ethics_rev_engl.html, and by ICOM Measures Concerning the Fight Against the Illicit Traffic of Cultural Property (2004) <http://palimpsest.stanford.edu/icom/measure.html>
- B. The Museum observes the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) http://www.unesco.org/culture/laws/1970/html_eng/page1.shtml and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954) <http://www.icomos.org/hague/>
- C. The Museum observes all wildlife regulations addressed in the Convention on International Trade in Threatened and Endangered Species of Wild Fauna and Flora <http://www.cites.org/>

II. Federal laws and regulations include but are not limited to:

To search for U.S. Code: <http://uscode.house.gov/usc.htm>

To search for Code of Federal Regulations: <http://www.gpoaccess.gov/cfr/index.html>

- A. Lacey Act (1900)
16 USC 701; 1981 Amendments 16 USC 3371-3378; 15 CFR 904; 50 CFR 10; 50 CFR 14; 50 CFR 300
- B. Antiquities Act (1906)
16 USC 431-433; 18 CFR 6; 43 CFR 2300
- C. Migratory Bird Treaty Act (1918)
USC 703-712; 50 CFR 21.1-60
- D. Bald and Golden Eagle Protection Act (1940)
SC 668-668d
- E. Fish and Wildlife Act (1956)
16 USC 742a-754j-2; 50 CFR 20
- F. Marine Mammal Protection Act (1972)
16 USC 1361-14211; 50 CFR 18.1-129
- G. Endangered Species Act (1973)
16 USC 1531-1544; 50 CFR 23.1-57
- H. Federal Land Management Policy Act (1976)
43 USC 1701-1782; 36 CFR 254; 43 CFR 5000

- I. Archaeological Resources Protection Act (1979)
16 USC 470aa-mm
- J. African Elephant Conservation Act (1988)
16 USC 4201-4245; 50 CFR 17
- K. Native American Graves Protection and Repatriation Act (NAGPRA) (1990)
25 USC 3001; 43 CFR 1
- L. Wild Bird Conservation Act (1992)
USC 4901-4916; 50 CFR 15.1-33
- M. Federal Freedom of Information Act (1966)
- N. Federal Privacy Act (1974)
- O. Federal Sunshine Act (1976)

III. State laws and regulations include but are not limited to:

To search for California legislation:

<http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

- A. California Civil Code Section 1899-1899.11.
- B. California Public Records Act (1968)

IV. Local laws and regulations include but are not limited to:

To search for local legislation contact the local office.

APPENDIX B: TOWN OF YUCCA VALLEY CODE OF ETHICS

Policy: It is the Town's policy to be a government responsive to the diverse citizenry's needs and concerns, and secure a safe environment while maintaining the highest quality of life. To this end, employees are expected to be committed to customer care, and to continue to promote a user friendly philosophy. To effectuate this policy, all Town employees must understand and meet the standards of conduct and performance as specified in the Employee Handbook with Personnel Rules, Policies and Procedures (Town of Yucca Valley Employee Handbook, 2012).

APPENDIX C: AMERICAN ASSOCIATION OF MUSEUMS (AAM) CODE OF ETHICS FOR MUSEUMS

Introduction

Ethical codes evolve in response to changing conditions, values, and ideas. A professional code of ethics must, therefore, be periodically updated. It must also rest upon widely shared values. Although the operating environment of museums grows more complex each year, the root value for museums, the tie that connects all of us together despite our diversity, is the commitment to serving people, both present and future generations. This value guided the creation of and remains the most fundamental principle in the following *Code of Ethics for Museums*.

Code of Ethics for Museums

Museums make their unique contribution to the public by collecting, preserving, and interpreting the things of this world. Historically, they have owned and used natural objects, living and nonliving, and all manner of human artifacts to advance knowledge and nourish the human spirit. Today, the range of their special interests reflects the scope of human vision. Their missions include collecting and preserving, as well as exhibiting and educating with materials not only owned but also borrowed and fabricated for these ends. Their numbers include both governmental and private museums of anthropology, art history and natural history, aquariums, arboreta, art centers, botanical gardens, children's museums, historic sites, nature centers, planetariums, science and technology centers, and zoos. The museum universe in the United States includes both collecting and non-collecting institutions. Although diverse in their missions, they have in common their nonprofit form of organization and a commitment of service to the public. Their collections and/or the objects they borrow or fabricate are the basis for research, exhibits, and programs that invite public participation.

Taken as a whole, museum collections and exhibition materials represent the world's natural and cultural common wealth. As stewards of that wealth, museums are compelled to advance an understanding of all natural forms and of the human experience. It is incumbent on museums to be resources for humankind and in all their activities to foster an informed appreciation of the rich and diverse world we have inherited. It is also incumbent upon them to preserve that inheritance for posterity.

Museums in the United States are grounded in the tradition of public service. They are organized as public trusts, holding their collections and information as a benefit for those they were established to serve. Members of their governing authority, employees, and volunteers are committed to the interests of these beneficiaries. The law provides the basic framework for museum operations. As nonprofit institutions, museums comply with applicable local, state, and federal laws and international conventions, as well as with the specific legal standards governing trust responsibilities. This *Code of Ethics for Museums* takes that compliance as given. But legal standards are a minimum. Museums and those responsible for them must do more than avoid

legal liability, they must take affirmative steps to maintain their integrity so as to warrant public confidence. They must act not only legally but also ethically. This *Code of Ethics for Museums*, therefore, outlines ethical standards that frequently exceed legal minimums.

Loyalty to the mission of the museum and to the public it serves is the essence of museum work, whether volunteer or paid. Where conflicts of interest arise — actual, potential, or perceived — the duty of loyalty must never be compromised. No individual may use his or her position in a museum for personal gain or to benefit another at the expense of the museum, its mission, its reputation, and the society it serves.

For museums, public service is paramount. To affirm that ethic and to elaborate its application to their governance, collections, and programs, the American Association of Museums promulgates this *Code of Ethics for Museums*. In subscribing to this code, museums assume responsibility for the actions of members of their governing authority, employees, and volunteers in the performance of museum-related duties. Museums, thereby, affirm their chartered purpose, ensure the prudent application of their resources, enhance their effectiveness, and maintain public confidence. This collective endeavor strengthens museum work and the contributions of museums to society — present and future.

Governance

Museum governance in its various forms is a public trust responsible for the institution's service to society. The governing authority protects and enhances the museum's collections and programs and its physical, human, and financial resources. It ensures that all these resources support the museum's mission, respond to the pluralism of society, and respect the diversity of the natural and cultural common wealth.

Thus, the governing authority ensures that:

- all those who work for or on behalf of a museum understand and support its mission and public trust responsibilities
- its members understand and fulfill their trusteeship and act corporately, not as individuals
- the museum's collections and programs and its physical, human, and financial resources are protected, maintained, and developed in support of the museum's mission
- it is responsive to and represents the interests of society
- it maintains the relationship with staff in which shared roles are recognized and separate responsibilities respected
- working relationships among trustees, employees, and volunteers are based on equity and mutual respect
- professional standards and practices inform and guide museum operations
- policies are articulated and prudent oversight is practiced
- governance promotes the public good rather than individual financial gain.

Collections

The distinctive character of museum ethics derives from the ownership, care, and use of objects, specimens, and living collections representing the world's natural and cultural common wealth.

This stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility, and responsible disposal.

Thus, the museum ensures that:

- collections in its custody support its mission and public trust responsibilities
- collections in its custody are lawfully held, protected, secure, unencumbered, cared for, and preserved
- collections in its custody are accounted for and documented
- access to the collections and related information is permitted and regulated
- acquisition, disposal, and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials
- acquisition, disposal, and loan activities conform to its mission and public trust responsibilities
- disposal of collections through sale, trade, or research activities is solely for the advancement of the museum's mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum's discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.
- the unique and special nature of human remains and funerary and sacred objects is recognized as the basis of all decisions concerning such collections
- collections-related activities promote the public good rather than individual financial gain
- competing claims of ownership that may be asserted in connection with objects in its custody should be handled openly, seriously, responsively and with respect for the dignity of all parties involved.

Programs

Museums serve society by advancing an understanding and appreciation of the natural and cultural common wealth through exhibitions, research, scholarship, publications, and educational activities. These programs further the museum's mission and are responsive to the concerns, interests, and needs of society.

Thus, the museum ensures that:

- programs support its mission and public trust responsibilities
- programs are founded on scholarship and marked by intellectual integrity
- programs are accessible and encourage participation of the widest possible audience consistent with its mission and resources
- programs respect pluralistic values, traditions, and concerns
- revenue-producing activities and activities that involve relationships with external entities are compatible with the museum's mission and support its public trust responsibilities
- programs promote the public good rather than individual financial gain.

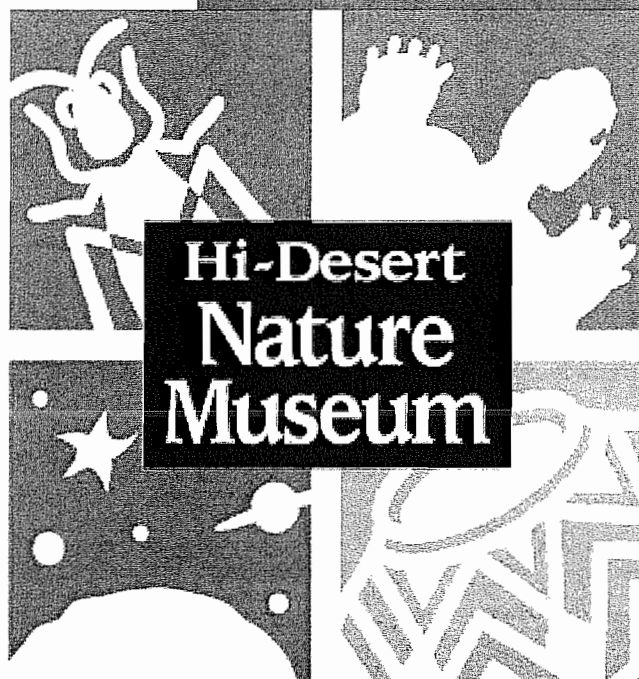
Promulgation

This *Code of Ethics for Museums* was adopted by the Board of Directors of the American Association of Museums on November 12, 1993. The AAM Board of Directors recommends that each nonprofit museum member of the American Association of Museums adopt and promulgate its separate code of ethics, applying the *Code of Ethics for Museums* to its own institutional setting.

A Committee on Ethics, nominated by the president of the AAM and confirmed by the Board of Directors, will be charged with two responsibilities:

- establishing programs of information, education, and assistance to guide museums in developing their own codes of ethics
- reviewing the *Code of Ethics for Museums* and periodically recommending refinements and revisions to the Board of Directors.

COLLECTIONS MANAGEMENT PROCEDURES MANUAL



Revised 2014

TABLE OF CONTENTS

1. ACCEPTING AND ACESIONING AN OBJECT INTO THE PERMANENT COLLECTION.....	3
1.1 Associated Forms/Documents	
1.2 Procedures	
2. ACCEPTING AND ACQUISITIONING AN OBECT FOR THE EDUCATION/REFERENCE COLLECTION.....	6
2.1 Associated Forms/Documents	
2.2 Procedures	
3. DEACCESSIONING AND DISPOSITION FROM THE PERMANENT COLLECTION.....	8
3.1 Associated Forms/Documents	
3.2 Procedures	
4. INCOMING LOANS.....	10
4.1 Associated Forms/Documents	
4.2 Procedures	
5. OUTGOING LOANS.....	13
5.1 Associated Forms/Documents	
5.2 Procedures	

1. ACCEPTING AND ACCESSIONING AN OBJECT INTO THE PERMANENT COLLECTION

1.1 ASSOCIATED FORMS/DOCUMENTS

- Temporary Custody Receipt form
- Provenance form
- Deed of Gift form
- Receipt for Returned Objects form

1.2 PROCEDURES

1. The Museum Registrar or Museum Supervisor receives an object or an offer of an object from a potential donor. If it is simply an offer or potential purchase for the Hi-Desert Nature Museum's permanent collection, and is not yet in the custody of the museum, skip to No. 8 below.
2. If the object is to be placed under the custody of the Hi-Desert Nature Museum until it awaits approval for accession, the Museum Registrar must prepare a **Temporary Custody Receipt** form for the donor's signature. By signing the **Temporary Custody Receipt**, the donor acknowledges the Hi-Desert Nature Museum's acceptance procedures.
3. The Museum Registrar must also have the donor complete a **Provenance** form.
4. The Museum Registrar will retain original forms for the museum's records, and provide copies of the **Temporary Custody Receipt** (and all other applicable forms) to the donor for his or her records.
5. Immediately following, the Museum Registrar will create an "Active" *Temporary Custody* record in PastPerfect and transcribe information provided in the original **Temporary Custody Receipt** (and all other forms) where appropriate.
6. Once a PastPerfect record has been created, the original **Temporary Custody Receipt** and all other forms associated with the transaction will be filed in the "Active/Status Pending" file under the museum's "Temporary Custody" *Loan* records.
7. The Museum Registrar must then immediately photograph and label the object(s) in custody with their corresponding receipt number and donor's last name, and place them in an area designated for objects in temporary custody.

8. Objects to be considered for the permanent collection will be presented to the Parks, Recreation, and Cultural Committee (PRCC) for review and approval for accession. The committee will either approve or disapprove such acquisitions based on information provided on the object(s) by the Museum Supervisor.
9. ***If approved***, the Museum Registrar will prepare a donor package to be sent to the donor. The donor will packet include:
 - A **Deed of Gift** indicating objects to be gifted to the Hi-Desert Nature Museum.
 - A **cover letter** from the Museum Supervisor thanking the donor for his/her gift to the museum and outlining procedures for completing the gifting process.
 - One self-addressed envelope with a stamp.

The donor must sign and date the **Deed of Gift**, and return it in the self-addressed envelope provided in the packet.

If disapproved, the Museum Supervisor notifies the donor of the committee's decision and arranges to return the object(s) as soon as possible in the method noted on the **Temporary Custody Receipt**.

- a. If the object(s) is to be returned to the donor, the Museum Registrar will accompany object(s) with a **Receipt for Returned Objects**. Upon receipt of the object(s), the donor must sign and date the receipt and return it to the Hi-Desert Nature Museum. The Museum Registrar may provide a donor with a copy of the receipt, if requested.
 - b. The Museum Registrar will update the *Temporary Custody* PastPerfect record's status to denote that the object(s) have been "Returned."
 - c. All documents associated with the rejected object(s), including the original **Temporary Custody Receipt**, the **Provenance** form, and the **Receipt for Returned Objects** are filed in the 'Returned' file under the museum's "Temporary Custody" *Loan* records. **NO FURTHER ACTION IS REQUIRED.**
10. Upon the return of the **Deed of Gift** to the museum, the Museum Registrar is to prepare the object(s) for accession. This includes:
 - a. Assigning the accession with a binomial number—year of the accession, then number of accession within the accession's year (e.g., 2014.001). Each object within the accession is assigned a trinomial number—year of the accession, number of accession within the accession's year, then object number within the accession (e.g., 2014.001.0001).
 - b. Changing the "Active" status in the PastPerfect *Temporary Custody* record to "Accessioned."

- c. Creating an *Accession* record in PastPerfect.
- d. Cataloging objects associated with the accession by creating *Object*, *Photograph* or *Archive* records in PastPerfect.
- e. Creating a hard-copy file to be placed in the museum's *Accession* records. The file should include copies of the *Accession* and *Catalog* records formulated by PastPerfect, the original **Deed of Gift**, **Provenance** form, **Temporary Custody Receipt**, and any other documentation associated transaction of accessioning the object(s).

2. ACCEPTING AND ACQUISITIONING AN OBJECT FOR THE EDUCATION/REFERENCE COLLECTION

2.1 ASSOCIATED FORMS/DOCUMENTS

- Temporary Custody Receipt form
- Provenance form
- Charitable Donation Receipt form
- IRS Form 8283 Noncash Charitable Contributions
- Receipt for Returned Objects form

2.2 PROCEDURES

1. The Museum Registrar or Museum Supervisor receives an object or an offer of an object from a potential donor. If it is simply an offer or potential purchase for the Hi-Desert Nature Museum's permanent collection, and is not yet in the custody of the museum, skip to No. 8 below.
2. If the object is to be placed under the custody of the Hi-Desert Nature Museum until it awaits acquisition approval, the Museum Registrar must prepare a **Temporary Custody Receipt** for the donor's signature. By signing the **Temporary Custody Receipt**, the donor acknowledges the Hi-Desert Nature Museum's acceptance procedures.
3. The Museum Registrar must also have the donor complete a **Provenance** form, if applicable.
4. The Museum Registrar will retain original forms for the museum's records, and provide copies of the **Temporary Custody Receipt** (and all other applicable forms) to the donor for his or her records.
5. Immediately following, the Museum Registrar will create an "Active" *Temporary Custody* record in PastPerfect and transcribe information provided by the original **Temporary Custody Receipt** (and all other forms) where appropriate.
6. Once a PastPerfect record has been created, the original **Temporary Custody Receipt** and all other forms will be filed in the "Active/Status Pending" file under the museum's "Temporary Custody" *Loan* records.

7. The Museum Registrar must then immediately photograph and label the object(s) in custody with their corresponding receipt number and donor's last name, and place them in an area designated for objects in temporary custody.
8. Objects to be considered for the education/reference collection will be reviewed by the Museum Supervisor and Museum Registrar.
9. **If accepted for acquisition**, the Museum Registrar will provide the donor with a completed Town of Yucca Valley **Charitable Donation Receipt**, noting a fair market amount for the object(s) donated, which is to be provided by the donor. In the event that a donor cannot provide a fair market amount, then the Museum Registrar will provide an estimate based on fair market valuations that are publically known. The Museum Registrar may also provide a copy of **IRS Form 8283 Noncash Charitable Contributions**, if requested. However, museum staff are not responsible for completing the form. The form must be completed by a Town of Yucca Valley accounting officer.
 - a. The Museum Registrar will switch the PastPerfect record from "Active" to "Returned," and make a notation signifying that the object has been acquisitioned for educational/reference purposes.
 - b. If the object was acquisitioned, the original forms should be filed in "Non-Collection Acquisitions" under the museum's *Acquisition* records. **NO FURTHER ACTION IS REQUIRED TO SECURE THE OBJECT.**

If rejected for acquisition, the Museum Registrar may dispose of the object as soon as possible in accordance with the method selected by the donor on the **Temporary Custody Receipt**.

- a. If the object is to be returned to the donor, the Museum Registrar will accompany objects to be returned with a **Receipt for Returned Objects**. Upon receipt of the object(s), the donor must sign and date the receipt and return it to the Hi-Desert Nature Museum. The Museum Registrar may provide a donor with a copy of the receipt, if requested.
- b. The Museum Registrar will update the *Temporary Custody* PastPerfect record to denote that the object(s) have been "Returned."
- c. All documents associated with the rejected object(s), including the original **Temporary Custody Receipt**, the **Provenance** form, and the **Receipt for Returned Objects** are filed in the "Returned" file under the museum's "Temporary Custody" *Loan* records.

3. DEACCESSIONING AND DISPOSITION **FROM THE** **PERMANENT COLLECTION**

3.1 ASSOCIATED FORMS/DOCUMENTS

- Adapted Temporary Custody Receipt form
- Incoming Loan Agreement form
- Receipt for Loaned Objects form
- Incoming/Outgoing Condition Report forms

3.2 PROCEDURES

1. The Museum Registrar makes a recommendation for deaccession to the Museum Supervisor.
2. If the Museum Supervisor agrees to move forward with a deaccession, the Museum Supervisor, in consultation with the Museum Registrar, prepares a Parks, Recreation, and Cultural Commission staff report including deaccession recommendations and arranges for the matter to be placed on the agenda for discussion and approval.
3. The Parks, Recreation, and Cultural Commission members must review the staff report. The decision of the Parks, Recreation, and Cultural Commission to deaccession does not have to be unanimous, but a simple majority of those present. The Museum Supervisor serves as an ex-officio member and has no vote.
4. Based on the evaluations and recommendations made by the Museum Supervisor, the Parks, Recreation, and Cultural Commission must also agree on a method of disposal.
5. Upon approval for deaccession, the object shall be removed from the permanent collection and all records are changed to reflect that action.
 - a. A copy of the staff report, as well as the meeting minutes shall be obtained for the *Deaccession* record.
 - b. *Accession* and *Object PastPerfect* records shall be modified to reflect that the object(s) has been deaccessioned.
 - c. The associated *Accession* hard-copy file shall be transferred to the museum's *Deaccession* records.

6. Immediately following, the Museum Registrar will proceed to dispose of the deaccessioned object(s) in the manner approved by the Parks, Recreation, and Cultural Commission.

- a. **If the deaccessioned object is to be transferred to another non-profit museum or organization**, the Museum Registrar will prepare a **Deed of Transfer** form for the Museum Supervisor's signature. The document will be sent to the receiving organization. A copy will be retained for Hi-Desert Nature Museum records.
- b. **If the deaccessioned object is to be sold to another non-profit, education institution, or public benefit institution**, the Museum Registrar must consult with legal counsel to determine sale price, provide proof of ownership, and transport.
- c. **If the deaccessioned object is to be destroyed**, the Museum Registrar will remove all accession and object numbers from the object. Then, he or she will destroy and discard the object in accordance with safety procedures provided by the Town of Yucca Valley, and any other safety regulations associated with discarding waste material.

4. INCOMING LOANS

4.1 ASSOCIATED FORMS/DOCUMENTS

- Adapted Temporary Custody Receipt form
- Incoming Loan Agreement form
- Receipt for Loaned Objects form
- Incoming/Outgoing Condition Report forms
- Receipt for Returned Objects form

4.2 PROCEDURES

1. The Museum Supervisor will request objects for loans from an individual or an organization.
2. Given the approval from the Museum Supervisor, the Museum Registrar will initiate the loan transaction by preparing the appropriate loan agreement form for the signature of the lender (or his/her agent) and assigning the transaction with a loan number. This portion of the loan transaction must be complete before the objects are received by the Hi-Desert Nature Museum.
 - a. If an object is to be placed on loan with the Hi-Desert Nature Museum for one of its **annual temporary exhibits**, the Museum Registrar will prepare an adapted **Temporary Custody Receipt** form, a short-form version of a loan agreement/incoming receipt created specifically for temporary exhibits.
 - b. If incoming objects are to be placed on loan with the Hi-Desert Nature Museum as part of a **stand-alone traveling exhibit** from a party or organization, the lending party or organization must provide a loan agreement. It is the Museum Registrar's responsibility to review and/or negotiate the terms of the loan. However, the Museum Supervisor must approve of and sign-off on all negotiations.
 - c. If an object is to be placed on **long-term loan** with the Hi-Desert Nature Museum, the Museum Registrar must prepare an **Incoming Loan Agreement** form.
3. Unless insurance is expressly waived, the Town of Yucca Valley through the Hi-Desert Nature Museum will insure all loans for all risks, wall-to-wall, for the full value as agreed on the loan form between the lender and the Hi-Desert Nature Museum. If an organization or individual insists upon carrying its own insurance, a Certificate of Insurance, naming the Town of Yucca Valley through the Hi-Desert Nature Museum as additional insured, will be required before the object is received.

4. The Museum Registrar will send two copies of the loan agreement to the lender for a signature.
5. Once the signed loan agreements are received by the Museum Registrar, the Museum Supervisor must sign and date both copies. One copy is then returned to the lender. The remaining copy is to be retained for the museum's records.
6. When necessary, the Museum Registrar should consult with the Museum Supervisor in making proper arrangements for the delivery/shipping of the loaned object(s). Shipping receipts should be used to document every change of hand of the object(s) in transit.
7. Upon receipt of the object(s), the Museum Registrar will complete a **Receipt for Loaned Objects**. The second portion of the receipt doubles as an incoming **Condition Report**. The Museum Registrar must complete the second portion as well. One copy is given to the lender at the time of delivery. The other copy is to be retained for museum's records.
 - a. If an adapted **Temporary Custody Receipt** was used to secure the object(s) for loan, the form may already include an area to document the receipt and condition, as well as the return of the loaned object(s). If this is true, the Museum Registrar must complete the sections on the form. If not, the Museum Registrar must follow through with an actual **Receipt for Loaned Objects and Condition Report**.
8. The loan transaction should then be assigned a loan number. Then, object(s) should be marked in a temporary manner to allow for immediate identification of the object(s).
 - a. For **long-term** and **traveling exhibit** loans, transactions are given a binomial "L-" number— year of the loan, followed by the number of the loan within the loan's year (e.g., L-2014.001). Each object within the loan is assigned a trinomial "L-" number—year of the loan, number of the loan within the loan's year, then object number within the loan (e.g., L-2014.001.0001).
 - b. For **in-house temporary exhibit** loans, transactions are also assigned a alphanumeric binomial number, including an abbreviation of the exhibit title, followed by the year of the exhibit, and then the number of the loan within the exhibit. For example, the first intake for the Hi-Desert Nature Museum's 2014 "Reduce-Reuse-Recycle" exhibit would be: RRR2014.001. Objects within the loan transaction are numbered with the abbreviation of the exhibit title, year of the exhibit, followed by the number of the loan within the exhibit, and then the object number within the loan (e.g., RRR2014.001.0001).
9. While the object(s) is on loan with the Hi-Desert Nature Museum, the Museum Registrar must retain active hard-copy and PastPerfect *Loan* records.

- a. If the object(s) is to be placed on loan as part of an **annual temporary exhibit**, the Museum Registrar will file the adapted **Temporary Custody Receipts** in one folder under the “Active Temporary Exhibit” *Loan* records.
- b. If the object(s) is to be placed on loan as part of a **stand-alone traveling exhibit**, the Museum Registrar will obtain a copy of the loan agreement from the lender and file it along with the **Receipt for Loaned Objects/Condition Report** under the “Active Temporary Exhibit” *Loan* records.
- c. If the object(s) is to be placed on **long-term loan**, the Museum Registrar will file the **Incoming Loan Agreement and Receipt for Loaned Objects/Condition Report** under the “Active Individual Incoming (long-term)” *Loan* records.

The Museum Registrar will then create and maintain all digital *Loan* records in PastPerfect under the *Loans* module.

9. Prior to the return of the object(s), the Museum Registrar will complete an outgoing **Condition Report**, noting any changes in condition of the object that may have occurred during its time at the Hi-Desert Nature Museum. If any damage, aside from normal wear and tear, has incurred, the Museum Registrar must take photographs of the damage to include in the loan file. The Museum Supervisor should be consulted prior to notifying the lender of the damage.
10. The Museum Registrar should return objects in accordance with methods and standards noted on the loan agreement between the Hi-Desert Nature Museum and the lender. To include with the object’s return, the Museum Registrar will complete a **Receipt for Returned Objects** form to be returned with the lender’s signature upon receipt of the loaned objects. Only the lender can sign the receipt and receive the object(s).
11. Once the receipt has been received by the Museum Registrar, it has been confirmed that the lender has received the previously loaned object(s) and now the loan is officially closed. The receipt will be filed with all other documents associated with the loan transaction. The loan file may be moved to the “Returned” *Loan* files, and the *Loan* record’s status on PastPerfect may be switched to “Returned,” as well.

5. OUTGOING LOANS

5.1 ASSOCIATED FORMS/DOCUMENTS

- Loan Agreement (from borrower)
- Outgoing Loan Agreement form
- Receipt for Loaned Objects form
- Incoming/Outgoing Condition Report forms
- Acknowledgement of loan completion letter

5.2 PROCEDURES

1. Requests for loans from the Hi-Desert Nature Museum must be made in writing to the Museum Supervisor and be accompanied by a Facilities Report from the requesting organization to assure for the safety of the object.
2. If the loan is approved by the Museum Supervisor, the Museum Registrar will create a record for the loan in PastPerfect's *Outgoing Loan* module and retain a hard-copy file of all documents obtained during the transaction in the museum's "Active" *Outgoing Loan* records.
3. The Museum Registrar will assign an outgoing loan number (not to be confused with an Incoming Loan number) to reference the transaction. Because objects being borrowed already have accession/object numbers, only the transaction needs to be assigned a tracking number. This can simply be a five digit number. Beginning at "Outgoing Loan # 00001," tracking numbers are then assigned subsequently.
3. The Museum Registrar will also complete a **Loan Agreement** supplied by the borrowing organization. The Museum Supervisor will review the terms of the agreement with the Museum Registrar and sign it.
 - a. If the borrowing organization cannot provide a **Loan Agreement**, or if the terms and conditions of the borrowing organization's loan form do not reach the approval of the Museum Supervisor, a Hi-Desert Nature Museum **Outgoing Loan Agreement** form will be provided, outlining terms and conditions to which the Hi-Desert Nature Museum feels comfortable moving forward with. This form is to be completed by the Museum Registrar and signed by the Museum Supervisor.
4. Borrowing organizations will be required to carry wall-to-wall insurance in an amount specified by the Hi-Desert Nature Museum to cover the value of the object(s). The Museum Registrar will request a Certificate of Insurance before the object is shipped to the borrower and retain it for its records.

5. Shipping or delivery arrangements should be made by the Museum Registrar in consultation with the Museum Supervisor. Just prior to the shipping or delivery of the object(s), the Museum Registrar will complete an **Outgoing Condition Report** that should be filed under the Hi-Desert Nature Museum's *Outgoing* records.
6. Upon receipt of the object(s), the borrowing organization must provide a receipt for the objects to the Hi-Desert Nature Museum. If the borrowing organization cannot provide one, the Museum Registrar will accompany the loaned objects with an in-house **Receipt for Loaned Objects** form to be filled out by the borrower and returned to the Museum Registrar at the Hi-Desert Nature Museum. The receipt should be filed under the Hi-Desert Nature Museum's *Outgoing* records.
7. Upon return of the object to the Hi-Desert Nature Museum at the end of the loan period, the Museum Registrar will inspect the returned objects and complete an **Incoming Condition Report** to file along with the loan file.
8. The borrowing organization must provide a receipt that indicates the termination/completion of the loan. If the borrowing organization does not, the Museum Registrar will provide an acknowledgement of the completion of the loan transaction letter to the borrower and retain a copy for the loan record.
9. Once the loan has been terminated all loan documentation should be filed in the "Returned" *Outgoing Loan* records. The loan's "Active" status in PastPerfect should be switched to "Returned."

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane Stueckle, Deputy Town Manager
Alex Qishta, Project Engineer
Date: June 5, 2014
For Council Meeting: June 23, 2014

Subject: Resolution No. 14-
Measure I Five-Year Plan 2014/2015 to 2018/2019
Measure I Expenditure Strategy

Prior Council Review: There has been no prior Town Council review of the recommended action.

Recommendation: That the Town Council adopts the Resolution, approving the Measure I Five-Year Capital Improvement Plan and Expenditure Strategy for Fiscal Years 2014/2015 to 2018/2019 under Measure I 2010-2040.

Executive Summary: The Town is required to adopt a Measure I Plan annually to identify projects, the estimated Measure I expenditures on those projects, and a brief project description to be undertaken in each year.

This is an administrative requirement of both the original and subsequent voter approved Measures.

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: Jurisdictions receiving program revenues from the Local Streets Program must annually adopt by action of the Council a Five-Year Plan, which outlines the specific projects upon which those funds shall be expended.

Measure I 2010-2040 has a modified formula of funding for the program, compared to Measure I 1990-2010.

Reviewed By:    
Town Manager Town Attorney Mgmt Services Dept Head

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

Under the new measure, seventy percent of revenue collected shall be apportioned for local street projects (with 2% reserved in a special account to be expended on Project Development and Traffic Management Systems), 25% for new Measure I Major Local Highways Program (MLH), and 5% for Senior and Disabled Transit Service. For this reason, a decrease in revenue going to the Local Street Program, starting in FY 2010/2011 reflects the new funding distribution approved by the voters in Measure I 2010-2040.

The regional funds, defined as 25% of total revenues, are held and allocated by SANBAG, and may only be expended (in the case of the Morongo Basin) on the state highways and major transportation links that aid regional mobility. SANBAG holds final authority over the approval of individual projects that these funds may be expended on.

There are extensive roadway improvement needs throughout the community which far exceed the available funds for construction or reconstruction of roadways. There are approximately 168 centerline miles of roadways within the Town's Maintained Roadway System. Most of the roadways are not improved to their ultimate widths. Additionally, many of the roadways are extremely aged and distressed as a result of having not been adequately maintained over their life span by the County. Current estimates indicate that in excess of an approximately \$15 million investment in reconstruction and rehabilitation would be necessary in order to bring all existing roadways within the maintained system up to acceptable standards. With approximately \$630,000 in Measure I roadway improvement revenues for FY 2013/2104, the Town does not have the financial ability to address all the roadway improvement needs of the existing Roadway System. Nor does the Town have sufficient existing revenue sources to add new roadways into the Maintained System.

Since incorporation, the Town has placed a high priority on completion and rehabilitation of the backbone major arterial system and on traffic safety improvements. Prioritization of local roadway funds has been directed toward high traffic volume roadways and those roadways providing access to community areas with higher population density.

The Town utilizes a Pavement Management System (PMS) as a guide in determining cost effective maintenance treatments, budget planning and project identification. The rationale behind the PMS is to get all pavement segments to the condition where preventative maintenance is the primary strategy being applied on a 5 to 7 year interval basis. In simple terms, it costs 1/5 to 1/10 the cost to effectively maintain a roadway segment compared to complete reconstruction costs after the pavement is 80% deteriorated and allowed to lapse into the poor and failed condition, then followed by the rehabilitation cycle.

Alternatives: Staff recommends no alternative actions. Plan consistency with expenditures is required for Measure I compliance review.

Fiscal impact: Adoption of the Measure I Resolution will have no financial impacts and will allow the Town to access the Measure I funds. According to SANBAG, the available Measure I funds for FY 2014/15 and the projected funds for the next four fiscal years are as follows:

<u>FY 2014/15</u>	<u>FY 2015/16</u>	<u>FY 2016/17</u>	<u>FY 2017/18</u>	<u>FY 2018/19</u>
\$679,012	\$697,685	\$718,616	\$741,971	\$767,940

Attachments: Resolution No. 14-
Expenditure Strategy
Measure I 2014/15 through 2018/2019 Transportation Project List

RESOLUTION NO 14-

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY,
CALIFORNIA, ADOPTING THE FIVE-YEAR MEASURE I
CAPITAL IMPROVEMENT PROGRAM
FOR FISCAL YEARS 2014/2015 TO 2018/2019.**

WHEREAS, San Bernardino County voters approved passage of Measure I 1990-2010 in November 1989 and renewed as Measure I 2010-2040 in November 2004 authorizing San Bernardino Associated Governments, acting as the San Bernardino County Transportation Authority, to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, Revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 89-1 of the Authority; and

WHEREAS, Expenditure Plans of the Ordinance require each local jurisdiction receiving revenue from the tax to expend those funds pursuant to a Capital Improvement Program adopted by resolution of the local jurisdiction; and

WHEREAS, Expenditure Plans of the Ordinance also require that each local jurisdiction annually adopt and update its Capital Improvement Plan; and

WHEREAS, the Five-year Transportation Project List, attached hereto as "Attachment A", and this reference made a part hereof, has been prepared for the Town of Yucca Valley; and

WHEREAS, the Town's Measure I Expenditure Strategy is attached hereto as "Attachment B".

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY
DOES RESOLVE AS FOLLOWS.**

Section 1. That the Five-Year Transportation Project List is hereby adopted, for fiscal years 2014/2015 to 2018/2019.

Section 2. That the Town Council adopts the Measure I Expenditure Strategy for Fiscal Year 2014/2015.

Section 3. That the Town Clerk of the Town of Yucca Valley is hereby directed to forward a copy of this Resolution to the San Bernardino Associated Governments.

PASSED, APPROVED AND ADOPTED THIS 23rd day of June, 2014.

MAYOR

ATTEST:

TOWN CLERK

TOWN OF YUCCA VALLEY			
MEASURE I FIVE YEAR PLAN 2014/15 TO 2018/19			
AR	STREET & LIMITS	IMPROVEMENT	COST EST.
14/2015	524 -UNRESTRICTED LOCAL STREET PROJECTS (68%)		
	SANBAG - STP		5,000
	Traffic Surveys & Warrant Studies	Speed Surveys & Traffic Studies	10,000
	Annual Traffic Census	Traffic Count Analysis	6,000
	SHOPP - Minor A/Caltrans	Project Application through Caltrans	5,000
	Congestion Management Plan (CMP)	Planning & Analysis	3,500
	Utilities	Street Lights	50,000
		TOTAL PROGRAMS	79,500
	Hidden Gold: Amador Ave/W. End	Overlay	14,152
		TOTAL OVERLAY PROJECT	14,152
	Joshua Lane: Joshua Drive - San Marino Dr	Cape	367,907
	Joshua Drive: Church St. - Joshua Lane	Cape	112,724
		TOTAL SLURRY/CAPE PROJECT	480,631
	Signal Maintenance Contract	Maintenance	8,750
		TOTAL OTHER PROJECTS	8,750
	TOTAL MEASURE I UNRESTRICTED PROJECTS		583,033
14/2015	522-MEASURE I MAJOR ARTERIAL PROJECTS (1990-2010 Measure I)		
	SR62: Apache/Palm (SLPP Match)	Construction	613,120
	TOTAL MEASURE I ARTERIALS (1990-2010 MEASURE I)		613,120

TOWN OF YUCCA VALLEY
MEASURE I FIVE YEAR PLAN 2014/15 TO 2018/19

YEAR	STREET & LIMITS	IMPROVEMENT	COST EST.
2015/2016	524 -UNRESTRICTED LOCAL STREET PROJECTS (68%)		
	SANBAG - STP		5,000
	Traffic Surveys & Warrant Studies	Speed Surveys & Traffic Studies	10,000
	Annual Traffic Census	Traffic Count Analysis	6,000
	SHOPP - Minor A/Caltrans	Project Application through Caltrans	5,000
	Congestion Management Plan (CMP)	Planning & Analysis	3,500
	Utilities	Street Lights	50,000
		TOTAL PROGRAMS	79,500
	Airway Ave: Paxton/Red Bluff	Slurry	11,584
	Airway Ct: Arway Ave/End	Slurry	1,033
	Avila Rd: Castro/Farello	Slurry	1,780
	Avila Rd: Farello/Cul-de-sac	Cape	12,738
	Bandera Rd: San Juan/End	Slurry	12,018
	Buena Suerte Ct: Buena Suerta Rd/End	Cape	4,250
	Buena Suerte Ln: Buena Suerte Rd/End	Cape	5,282
	Buena Suerte Rd: SR247E/Bandera	Slurry	11,513
	Buena Suerte Rd: SR247W/End	Cape	62,755
	Buena Vista Dr: SR247/Yucca Mesa Rd.	Slurry	94,241
	Castro Rd: Avila/Cul-de-sac	Slurry	4,307
	Del Rio Way: Buena Suerte/End	Slurry	\$1,277
	El Cortez Rd: Buena Suerte/SR247	Slurry	1,666
	Farello Ct: Farello Rd/End	Cape	7,357
	Farello Rd: Plaza Del Amigo/SR247	Cape	63,096
	247OH: Buena Suerte/End	Cape	6,221
	Imperial Rd: Paxton/Palo Alto	Slurry	7,452
	Juarez Ct: Farello/Cul-de-sa	Cape	5,450
	Mandarin Rd: Bandera/End	Slurry	5,439
	Montecello Ct: Montecello Rd/End	Cape	2,918
	Montecello Ln: Montecello Rd/End	Cape	5,486
	Montecello Rd: Panchita/Cul-de-sac	Cape	23,520
	Murrietta Ave: Paxton/Cul-de-sac	Slurry	8,430
	Panchita Rd: Farello/Montecello	Cape	50,194
	Plaza Del Amigo Rd: Buena Suerta/End	Slurry	7,655
	Red Bluff Ave: Paxton/Buena Suerte	Slurry	10,369
	Rome Ct: Paxton/Cul-de-sac	Slurry	2,136
	San Juan Rd: SR247/End	Slurry	4,354
	San Rafael Ct: San Rafeal Rd/End	Cape	5,296
	San Rafael Rd: Plaza Del Amigo/End	Cape	18,018
	Street Striping	Striping	10,000
		TOTAL SLURRY/CAPE PROJECT	467,835
		TOTAL	547,335

TOWN OF YUCCA VALLEY
MEASURE I FIVE YEAR PLAN 2014/15 TO 2018/19

YEAR	STREET & LIMITS	IMPROVEMENT	COST EST.
16/2017	524 -UNRESTRICTED LOCAL STREET PROJECTS (68%)		
	SANBAG - STP		5,000
	Traffic Surveys & Warrant Studies	Speed Surveys & Traffic Studies	10,000
	Annual Traffic Census	Traffic Count Analysis	6,000
	SHOPP - Minor A/Caltrans	Project Application through Caltrans	5,000
	Congestion Management Plan (CMP)	Planning & Analysis	3,500
	Utilities	Street Lights	50,000
		TOTAL PROGRAMS	79,500
	Apache Trail: SR62/Santa Fe Trail	Overlay	12,809
	Yuma Trail: Church/Cibola	Overlay	6,695
		TOTAL OVERLAY PROJECT	19,504
	Alaba Ave: Juarez/Cul de Sac	Slurry	3,741
	Balsa Ave: Juarez/San Andreas	Slurry	9,435
	Catalina Way: San Diego/Cul de Sac	Slurry	2,306
	Cortez Dr: Fortuna/Hermosa	Slurry	3,078
	Del Monte Ave: Santa Barbara/San Andreas	Slurry	14,471
	Emerson Ave: Ivanhoe/Joshua Lane	Slurry	3,351
	Fortuna Ave: Santa Barbara/San Andreas	Slurry	10,778
	Frontera Ave: Joshua Ln/San Andreas	Slurry	18,584
	Hermosa Ave: Santa Barbara/Cortez	Slurry	10,030
	Hidden Gold Dr: San Vicente/Cul de Sac	Slurry	12,483
	Ivanhoe Dr: Warren Vista/Cul de Sac	Slurry	2,689
	Ivanhoe Dr: San Vicente/Cul de Sac	Slurry	11,623
	Ivanhoe Dr: Emerson/Juarez	Slurry	3,640
	Juarez Dr: Warren Vista/Joshua Ln	Slurry	27,431
	Lisbon Dr: Warren Vista/Cul de Sac	Slurry	3,099
	Lisbon Dr: Frontera/Joshua Lane	Slurry	13,567
	Ribidoux Ave: San Andreas/Lisbon	Slurry	6,622
	Ribidoux Ct: Rubidoux Ave/Cul de Sac	Slurry	2,759
	San Andreas Rd: Warren Vista/Joshua Lane	Cape	79,072
	San Diego Dr: San Andreas/Juarez	Slurry	11,960
	San Vicente: Frontera/Joshua Lane	Slurry	20,918
	San Tropeze: Warren Vista/San Diego	Slurry	8,150
	Warren Vista Ave: San Andreas/Joshua Lane	Slurry	14,399
	Street Striping	Striping	10,000
		TOTAL SLURRY/CAPE PROJECT	304,186
		TOTAL	403,190

TOWN OF YUCCA VALLEY
MEASURE I FIVE YEAR PLAN 2014/15 TO 2018/19

YEAR	STREET & LIMITS	IMPROVEMENT	COST EST.
2017/2018	524 -UNRESTRICTED LOCAL STREET PROJECTS (68%)		
	SANBAG - STP		5,000
	Traffic Surveys & Warrant Studies	Speed Surveys & Traffic Studies	10,000
	Annual Traffic Census	Traffic Count Analysis	6,000
	SHOPP - Minor A/Caltrans	Project Application through Caltrans	5,000
	Congestion Management Plan (CMP)	Planning & Analysis	3,500
	Utilities	Street Lights	50,000
		TOTAL PROGRAMS	79,500
	Aberdeen Dr: OWS/Sage	Cape	68,959
	Skyline Ranch Rd: Malin Way/OWS	Slurry	30,515
	Yucca Trail: Sage/La Contenta	Cape	328,678
	Street Striping	Striping	10,000
		TOTAL SLURRY/CAPE PROJECT	438,152
		TOTAL	517,652

TOWN OF YUCCA VALLEY
MEASURE I FIVE YEAR PLAN 2014/15 TO 2018/19

AR	STREET & LIMITS	IMPROVEMENT	COST EST.
18/2019	524 -UNRESTRICTED LOCAL STREET PROJECTS (68%)		
	SANBAG - STP		5,000
	Traffic Surveys & Warrant Studies	Speed Surveys & Traffic Studies	10,000
	Annual Traffic Census	Traffic Count Analysis	6,000
	SHOPP - Minor A/Caltrans	Project Application through Caltrans	5,000
	Congestion Management Plan (CMP)	Planning & Analysis	3,500
	Utilities	Street Lights	50,000
		TOTAL PROGRAMS	79,500
	Deer Trail: SR62/Pueblo Trail	Overlay	41,553
	Lucerne Vista: Onaga/Pueblo	Overlay	32,392
	Natoma Trail: Del Monte/Cul-de-Sac	Overlay	11,099
	Pueblo Trail: Condalia/Valley Vista	Overlay	37,198
		TOTAL OVERLAY PROJECT	122,242
	Anaconda Dr: Grand/Sage	Slurry	4,740
	Baywood Circle: Navajo/Cul-de-sac	Slurry	1,570
	Bonanza Dr: Grand/Sage	Slurry	6,851
	Carlyle Dr: Grand/Sage	Slurry	5,116
	Desert Gold Dr: Grand/Sage	Slurry	5,865
	El Dorado Dr: Grand/Sage	Slurry	5,865
	Free Gold Dr: Grand/Sage	Slurry	5,870
	Golden Bee Dr: Cholla/Sage Ave	Cape	44,573
	Grand Ave: Kismet/Joshua Dr	Slurry	27,036
	Grand Ave: Joshua Dr/Navajo	Slurry	12,502
	Grand Ct: Grand/Cul-de-sac	Slurry	2,072
	Hidden Gold: Grand/Sage	Slurry	7,875
	Ivanhoe Dr: Grand/Sage	Slurry	7,193
	Java Dr: Grand/Kismet	Slurry	4,477
	Kismet Dr: Grand/Sage	Slurry	6,981
	La Cadena Dr: Amador/Gold	Slurry	3,442
	La Cadena Dr: Kismet/Sage	Slurry	3,706
	Navajo Trail: Sage/Grand	Slurry	4,274
	Palo Alto Ave: Paxton/Cul-de-sac	Slurry	8,010
	Piute Trail: Grand/Cul-de-sac	Slurry	1,724
	Sage Ave: S.End/Joshua Dr	Cape	65,403
	Sage Ct: Sage Ave/End	Cape	3,160
	Zuni Trail: Grand/Cul-de-sac	Slurry	1,598
	Street Striping	Striping	10,000
		TOTAL SLURRY/CAPE PROJECT	249,903
		TOTAL	451,645

**TOWN OF YUCCA VALLEY
MEASURE I EXPENDITURE STRATEGY
FY 2014/2015**

Elderly/Handicapped Fund: All revenue in the Elderly and Handicapped fund is expended by the Morongo Basin Transit Authority for necessary programs.

Local Street Program (LSP): Measure I Local Streets revenues are allocated to a number of projects, including reconstruction/rehabilitation/maintenance and engineering/design of arterials and residential roads, annual studies and/or reports such as pavement management program updates, traffic census reports, and similar activities.

Major Local Highways Program (MLH): Measure I Major Local Highway revenues are managed by SANBAG. By September 30th of each year, the Town shall submit a written request to SANBAG specifying the scope of the project(s), the requested amount and other fund sources required to fully fund the project(s).

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 May 2014

Date of Travel	Organization	Description	Location
	Mayor Lombardo	No Reportable Meetings	
	Mayor Pro Tem Huntington	No Reportable Meetings	
	Councilmember Abel	No Reportable Meetings	
	Councilmember Rowe	No Reportable Meetings	
	Councilmember Leone	No Reportable Meetings	



TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Administrative Services Director
Date: June 6, 2014
Council Meeting: June 23, 2014
Subject: Warrant Register June 23, 2014

Recommendation:

Ratify the Payroll Register total of \$130,219.68 dated May 23, 2014.
Warrant Register total of \$84,458.99 for checks dated May 29, 2014.

Order of Procedure:

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


Attachments:

Payroll Register No. 46 dated May 23, 2014 total of \$130,219.68
Warrant Register No. 51 dated May 29, 2014 total of \$84,458.99

Reviewed By:


Town Manager

Town Attorney


Admin. Services


Finance

____ Department Report

____ Ordinance Action

____ Resolution Action

____ Public Hearing

Consent

Minute Action

____ Receive and File

____ Study Item

TOWN OF YUCCA VALLEY
PAYROLL REGISTER # 46
CHECK DATE - May 23, 2014

Fund Distribution Breakdown

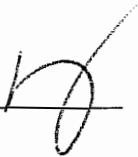
Fund Distribution

General Fund	\$119,802.79
Gas Tax Fund	10,416.89
Successor Agency	0.00 **

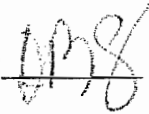
Grand Total Payroll \$130,219.68

****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 46 - Paid 05/23/2014
 (May 03, 2014 - May 16, 2014)
 Checks: 4876 - 4881


	Employee	Employer	Total
<u>Net Employee Pay</u>			
Payroll Checks	\$3,405.31		\$3,405.31
Direct Deposit	64,223.05	-	64,223.05
Sub-total	67,628.36		67,628.36
<u>Employee Tax Withholding</u>			
Federal	10,196.73		10,196.73
Medicare	1,285.27	1,285.22	2,570.49
SDI - EE	-	-	-
State	3,055.16		3,055.16
Sub-total	14,537.16	1,285.22	15,822.38
<u>Employee Benefit & Other Withholding</u>			
Misc. Payroll Adjustment Credit's	-	-	-
Deferred Compensation	3,415.07	2,912.28	6,327.35
PERS Survivor Benefit	46.00		46.00
Health Café Plan	1,343.70	11,086.60	12,430.30
American Fidelity Pre-Tax	29.95		29.95
American Fidelity After-Tax	85.25		85.25
American Fidelity-FSA	564.52		564.52
PERS EE - Contribution 6.25 %	253.91		253.91
PERS EE - Contribution 7%	948.68		948.68
PERS EE - Contribution 8%	4,764.12		4,764.12
PERS Retirement - Employer 6.25 %	-	253.91	253.91
PERS Retirement - Employer 7.846 %	-	1,090.86	1,090.86
PERS Retirement - Employer 18.586 %	-	11,618.38	11,618.38
Wage Garnishment - Employee	11.54		11.54
Life & Disability Insurance		901.65	901.65
Other Post Employee Benefit's		2,397.86	2,397.86
Unemployment Insurance		1,535.37	1,535.37
Workers' Compensation		3,509.29	3,509.29
Sub-total	11,462.74	35,306.20	46,768.94
Gross Payroll	\$93,628.26	\$36,591.42	\$130,219.68
Prepared by P/R & Financial Specialist: <i>HO</i> Reviewed by H/R & Risk Mgr.: <i>DRS</i>			


**WARRANT REGISTER # 51
CHECK DATE - MAY 29, 2014**

FUND DISTRIBUTION BREAKDOWN

Checks # 44795 to # 44849 are valid

GENERAL FUND # 001	\$55,485.97
CENTRAL SUPPLIES FUND # 100	\$1,933.08
COPS-LLESA FUND # 511	\$9,950.09
STREET MAINTENANCE - FUND # 515	\$2,264.11
MEASURE I 2010-2040 REGIONAL FUND # 520	\$7,703.37
MEASURE I LOCAL ROADS FUND # 523	\$345.00
MEASURE I 2010-2040 FUND # 524	\$4,679.04
SAFE ROUTES TO SCHOOLS FUND # 529	\$559.33
CAPITAL PROJECT RESERVE FUND # 800	\$1,539.00
GRAND TOTAL	<u>\$84,458.99</u>

Prepared by Shirlene Doten, Accounting Technician II 

Reviewed by Sharon Cisneros, Senior Accountant 

Approved by Curtis Yakimow, Administrative Services Director _____

Town of Yucca Valley

Warrant Register

May 29, 2014

Fund	Check #	Vendor	Description	Amount
001				
	44795	AlSCO/American Linen, Inc.	Facilities Operating Supplies	\$ 217.53
	44796	Janet Anderson	06/14 Medical Insurance	1,317.60
	44797	AT & T Mobility	Cell Phone Service	308.85
	44798	Builders Supply-Yucca Valley	Maintenance Supplies	5.39
	44799	Vanessa Cantu	Professional Services	525.00
	44800	Companion Animal Clinic	Veterinary Services & Supplies	306.00
	44802	Desert Pacific Exterminators, LLC	Facility Maintenance	251.00
	44803	Desert Arc	04/14 Professional Services	4,095.00
	44804	Desert Fire Extinguisher	Fire Extinguisher Service	241.84
	44805	Alexandra Dickerson	Recreation Program	40.00
	44807	Fred's Tires	Vehicle Maintenance	400.00
	44810	Hardesty Custom Floors	Animal Shelter Window Covering	166.00
	44811	Totalfunds by Hasler	Postage	406.43
	44812	HdL Hinderliter, DeLlamas & Assoc.	Sales Tax Audit Service	957.83
	44813	Hi-Desert Water	Water Service	597.91
	44814	Hi-Desert Publishing	Recreation Advertising	45.00
	44815	Honeywell	HVAC Contract 6-8/31/14	10,391.00
	44816	Intervet, Inc.	Shelter Adoption Supplies	1,288.23
	44819	Joyce Martini	Safety Equipment	151.18
	44820	Morongo Unified School District	Fleet Vehicle Fuel	3,422.03
	44821	Oasis Office Supply, Inc.	Office Supplies	193.86
	44822	OnTrac	Delivery Service	3.74
	44823	Carl Otteson	Professional Services	735.00
	44824	Petty Cash	Miscellaneous Supplies	283.19
	44825	Ron's Automotive	Vehicle Maintenance	65.00
	44826	SBCO-Recorder	Filing Fees	63.00
	44827	SBCO Sheriff's Dept	DUI Mini Grant Svs. FY 13/14	97.16
	44829	SCE	Electric Service	5,425.64
	44830	Simplot Partners, Inc.	Parks Maintenance Supplies	92.01
	44831	So. Cal. Gas Co.	Natural Gas Service	908.43
	44834	Tractor Supply	Supplies & Equipment	1,176.40
	44835	Turf Star, Inc.	Parks Maintenance	50.25
	44836	VCA Yucca Valley Animal Hospital	Veterinary Services	302.79
	44837	Verizon	Phone & Internet Service	4,461.71
	44838	Valley Independent	Forms Printing Service	327.73
	44839	US Bank Voyager Fleet Systems	Natural Gas Vehicle Fuel	69.00
	44840	Walmart Community	Animal Shelter Supplies	126.43
	44842	Charles Wolfe	Recreation Program Expense	100.00
	44844	Guy Wulf	Sports Referee	800.00
	44845	Yellowmart	Safety Equipment	428.76
	44846	Yucca Valley Quick Lube, LLC	Fleet Vehicle Maintenance	74.83

Town of Yucca Valley

Warrant Register

May 29, 2014

Fund	Check #	Vendor	Description	Amount
	44847	YV Chamber of Commerce	Partnership Agreement	3,422.72
	44849	Yucca Valley Auto Parts, Inc.	Vehicle Maintenance	117.46
	EFT	The Home Depot	Facilities Maintenance	3,519.98
	EFT	First Bankcard	Supplies/Conferences/Dues	7,507.06
Total 001	GENERAL FUND			\$ 55,485.97
100	INTERNAL SERVICES FUND			
	44808	GE Capital Corporation	Com Dev Copier Lease	\$ 1,933.08
Total 100	INTERNAL SERVICES FUND			\$ 1,933.08
511	COPS-LLESA FUND			
	44828	SBCO Sheriff's Dept	LLESA Overtime FY 13/14 3rd Qtr	\$ 9,880.35
	44832	Time Warner Cable	Sheriff's Office Cable Service	69.74
Total 511	COPS-LLESA FUND			\$ 9,950.09
515	GAS TAX FUND			
	44795	AlSCO/American Linen, Inc.	Streets Uniform Service	\$ 67.64
	44798	Builders Supply-Yucca Valley	Maintenance Supplies	46.70
	44809	Gemini Specialized Machining	Maintenance Supplies	65.00
	44817	Johnson Machinery Co.	Streets Tractor Supplies	179.37
	44824	Petty Cash	Miscellaneous Supplies	85.26
	44833	Tops n Barricades, Inc.	Street Signage Supplies	625.86
	44834	Tractor Supply	Supplies & Equipment	534.05
	44843	Woods Auto Repair	Vehicle Maintenance	160.23
	44845	Yellowmart	Safety Equipment	500.00
Total 515	GAS TAX FUND			\$ 2,264.11
520	MEASURE I 2010-2040 REGIONAL FUND			
	44841	Albert A. Webb Assoc.	Dumosa Signal Project	\$ 7,703.37
Total 520	MEASURE I 2010-2040 REGIONAL FUND			\$ 7,703.37
523	MEASURE I LOCAL ROADS FUND			
	44801	Counts Unlimited	Traffic Counting Services	\$ 345.00
Total 523	MEASURE I LOCAL ROADS FUND			\$ 345.00
524	MEASURE I 2010-2040 FUND			
	44801	Counts Unlimited	Traffic Counting Services	\$ 4,655.00
	44806	FedEx	Delivery Service	24.04
Total 524	MEASURE I 2010-2040 FUND			\$ 4,679.04

Town of Yucca Valley

Warrant Register

May 29, 2014

Fund	Check #	Vendor	Description	Amount
529		SAFE ROUTES TO SCHOOL FUND		
	44806	FedEx	Delivery Service	\$ 55.94
	44818	Legacy Office Products	Copying Service	503.39
Total 529		SAFE ROUTES TO SCHOOL FUND		\$ 559.33
800		CAPITAL PROJECTS RESERVE FUND		
	44848	Yucca Valley Mirror & Glass	Brehm 1 Restroom Upgrade	\$ 1,539.00
Total 800		CAPITAL PROJECTS RESERVE FUND		\$ 1,539.00
***		Report Total		\$ 84,458.99