TOWN OF YUCCA VALLEY
TOWN COUNCIL MEETING

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

TOWN COUNCIL: 6:00 p.m.
TUESDAY, JULY 15, 2014
YUCCA VALLEY COMMUNITY CENTER
YUCCA ROOM
57090 - 29 PALMS HIGHWAY
YUCCA VALLEY, CALIFORNIA 92284

CLOSED SESSION: 5:30 p.m.
TUESDAY, JULY 15, 2014
TOWN HALL CONFERENCE ROOM
57090 - 29 PALMS HIGHWAY
YUCCA VALLEY, CALIFORNIA 92284

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TOWN COUNCIL
Robert Lombardo, Mayor
George Huntington, Mayor Pro Tem
Merl Abel, Council Member
Robert Leone, Council Member
Dawn Rowe, Council Member
* * * *
TOWN ADMINISTRATIVE OFFICE:
760-369-7207
www.yucca-valley.org

AGENDA
MEETING OF THE
TOWN OF YUCCA VALLEY COUNCIL
TUESDAY JULY 15, 2014
6:00 P.M.

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

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

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

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

CLOSED SESSION (5:30 p.m.)
(Public Comments will be taken in the Yucca Room prior to the Closed Session.)

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).

REPORT OUT FROM CLOSED SESSION

OPENING CEREMONIES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

INVOCATION

APPROVAL OF AGENDA

Action: Move_____2nd_____Vote_____.

CONSENT AGENDA

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

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

1-9 2. Special Town Council Meeting Minutes of June 23, 2014.

   Recommendation: Approve the minutes of the Special Town Council Meeting of June 23, 2014 as presented

10-42 3. SR62, Camino del Cielo to Acoma, Signal Synchronization Project –
Town Project No. 8028
Congestion Mitigation Air Quality (CMAQ) Grant
Federal Project No. CMLN 5466(019)
Award of Construction Contract
DBX, Inc., Temecula, CA

   Recommendation: Award the construction contract to DBX, Inc., in the amount of $49,600 and authorize a construction contingency in the amount of $4,960, for a total contract amount of $54,560, 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.

43-65 4. SR62 & Dumosa Avenue Traffic Signal Project – Town Project No.8456
Approval of Plans and Specifications
Authorization to Advertise for Construction

   Recommendation: Adopt the Resolution, approve the plans and specifications for Project No. 8456, and authorize the Town Clerk to advertise and receive bids.

66-72 5. Telecommunication Services- Award of Contract

Recommendation: Review and approve the selection of TelePacific, Inc. to provide telecommunication services to the Town for a three-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.

73-115 6. Contract Facility/Park Maintenance Services
Desert Arc
Contract Amendment for Contract Services

Recommendation: Authorize the Town Manager to execute the Amendment of the professional services agreement with Desert Arc, with a maximum annual contract value of $50,614.00, based upon organizational need and efficiency, and extend the Agreement for two years ending on June 30, 2016.

116-128 7. Warrant Register

Recommendation: Ratify Payroll Register total of $284,440.45 for checks dated June 6, 2014 and June 20, 2014. Ratify Warrant Register total of $476,518.36 for checks dated June 12, 2014 and June 26, 2014.

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

Recommendation: Adopt Consent Agenda (items 1-7)

Action: Move_____2nd_____Vote _____

DEPARTMENT REPORTS

129-144 8. Brehm Youth Sports Park
Acquisition Agreement

Recommendation: Approve the acquisition agreement subject to non-substantive changes, authorizing the Town Attorney, Mayor and Town Manager to sign the Agreement and all necessary documents to open and close escrow and to acquire the property.

Action: Move_____2nd_____Vote _____

145-159 9. Black Rock Canyon Road

Recommendation:

Alternative 1: Adopt the Resolution, approve the Maintenance Area of Black Rock Canyon Road, between the Town's southern boundary and to the northern edge of San Marino Drive, identified on Attachment A to the Resolution, directs staff to proceed with obtaining necessary easements and accepts Black Rock Canyon Road into the Town's Maintained Road System on the date that Matich Corporation begins work on Black Rock Canyon Road, directing the Town Engineer to report back to the Town Council on the effective date of acceptance.

Alternative 2: Direct staff to proceed with preparation of shelf ready construction plans, and to return to the Town Council with necessary budget appropriations and supportive actions.

Action: Move_____2nd_____Vote _____

POLICY DISCUSSION

160-310 10. Town Council Policy Discussion and Direction to Staff
Posting Regulatory Signs on Private, Non-Maintained Dirt Roads

Recommendation:

Alternative 1: **Directs staff to return with mid-year budget review (February/March) with identification of circulation system "collectors" in private non-maintained dirt road neighborhoods that should be considered for bringing into the Town's Maintained Road System.**

Alternative 2: **Directs staff to reinitiate discussions with San Bernardino County for the potential formation of County Service Areas for road maintenance within the Town.**

Alternative 3: **Take no action and continue with currently policy implementation.**

Alternative 4: **Request special legislation through the State legislative process establishing a maximum speed limit of 15 or 25 miles per hour on all non-maintained dirt roads within the Town of Yucca Valley.**

Action: Move_____2nd_____Vote _____

DEPARTMENT REPORT

311-328 11. Appointment of Town Manager
Approval of Town Manager Agreement

Recommendation: Appoint the selected candidate for Town Manager ("Selected Candidate") effective July 15, 2014 and approve the employment agreement between the Town and Selected Candidate

Action: Move_____2nd_____Vote _____

FUTURE AGENDA ITEMS

PUBLIC COMMENTS

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

STAFF REPORTS AND COMMENTS

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

11. Council Member Abel

12. Council Member Leone

13. Council Member Rowe

14. Mayor Pro Tem Huntington

15. Mayor Lombardo

ANNOUNCEMENTS

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

The next regularly scheduled meeting of the Town Council is 6:00 p.m., Tuesday, August 19, 2014, at the Yucca Valley Community Center Yucca Room.

There will not be a regular meeting on Tuesday, August 5, 2014 due to lack of a quorum.

ADJOURNMENT

Yucca Valley Town Council

Meeting Procedures

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

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

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

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

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

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

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

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

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

ACRONYM LIST

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

COUNCIL COMMITTEE MEETING TIMES

COMMITTEE	REPRESENTATIVE	TIMES	LOCATION
SANBAG	HUNTINGTON ROWE (ALT)	10:30 am 1st Wed	San Bernardino
MEASURE I	HUNTINGTON ROWE (ALT)	9:30 am 3rd Fri.	Apple Valley
DESERT SOLID WASTE JPA	HUNTINGTON LOMBARDO (ALT)	10:00am 2nd Thurs Feb, May, Aug, Nov	Victorville
SOLID WASTE ADVISORY TASK FORCE	HUNTINGTON	3rd Wed. April & October	Highland
LEAGUE OF CALIFORNIA CITIES DESERT/MOUNTAIN DIVISION	LOMBARDO ROWE (ALT)	10:00 am. 4th Fri quarterly	Various Locations
MORONGO BASIN TRANSIT AUTHORITY	ABEL LEONE ROWE (ALT)	5:00 pm 4th Thurs	Joshua Tree
MOJAVE AIR QUALITY DISTRICT	LEONE ROWE (ALT)	10:00 am 4th Mon	Victorville
LEAGUE OF CALIFORNIA CITIES LEGISLATIVE DELEGATE	MAYOR		
LEGISLATIVE TEAM	HUNTINGTON ROWE	Proposed for Council Member to work with Town Manager meeting with legislators when necessary.	
CITY/COUNTY ANIMAL SERVICES JPA	HUNTINGTON LOMBARDO	12:00 p.m. last Thurs.	Yucca Valley
SPORTS COUNCIL	HUNTINGTON	March, June, Sept., Oct.	Yucca Valley
SBCO HOMELESS PARTNERSHIP AND INTERAGENCY COUNCIL ON HOMELESSNESS	LEONE LOMBARDO (ALT)	9:00 a.m. 4th Wed	San Bernardino

AD HOC COMMITTEES

SENIOR HOUSING	HUNTINGTON ROWE
SEWER FINANCING	ROWE LEONE
COUNCIL RULES & PROCEDURES	HUNTINGTON LOMBARDO
MORONGO UNIFIED SCHOOL DISTRICT	ROWE
AUDIT	
BREHM PARK	ABEL LOMBARDO
COUNTY BUDGET COMMITTEE	ROWE HUNTINGTON
SUBDIVISION COMMITTEE	HUNTINGTON LEONE
RDA BOND COMMITTEE	ROWE LEONE
ONLINE VIDEO COMMITTEE	HUNTINGTON EVANS (PRCC)

TOWN OF YUCCA VALLEY
SPECIAL TOWN COUNCIL MEETING MINUTES
JUNE 23, 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, Town Attorney Laymon, and Town Clerk Copeland

The Pledge of Allegiance was led by Mayor Lombardo

PRESENTATIONS

1. Yucca Valley Youth Commission- Video Project

Administrative Services Director Yakimow introduced a video produced by the 2013-14 Youth Commission as one of its annual projects. The topic of the video is sleep deprivation of teens. Recreation Supervisor Earnest explained that the video will be used as a tool to present useful information to the community as well as to promote the Youth Commission.

AGENCY REPORT

2. Hi Desert Water District

Hi Desert Water District Operations Manager Mark Ban presented the agency report. Ban reported that public outreach continues for the wastewater project and a timeline on the upcoming assessment election was given.

Council Member Abel explained he had an opportunity to attend an outreach meeting and thought it was very informative. Abel encouraged residents to attend future outreach sessions and to be sure and visit the wastewater project website for additional information.

Council Member Rowe inquired on the status of the finalized engineers report.

Mayor Lombardo expressed that though the Town is not the lead agency on the project, the Town Council is supportive of Hi Desert Water District.

Mayor Lombardo opened public comment.

Tom Fauls, Joshua Tree, inquired on the cost the Town will be incurring if the

wastewater assessments are put in affect.

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

APPROVAL OF AGENDA

Mayor Pro Tem Huntington moved to approve the agenda for the Special Town Council Meeting of June 23, 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

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

4. **Approve** the Town Council Meeting Minutes for the regular meeting of May 6, 2014, the special meeting (budget workshop) of May 10, 2014, the special meeting (budget workshop) of May 20, 2014 and the regular meetings of May 20, 2014 and the regular meeting of June 3, 2014

5. **Approve** Final Parcel Map No. 19525, authorizing the Town Clerk and Town Manager to sign the Subdivision Improvement Agreement, subject to non-substantive changes, between the Town of Yucca Valley and Wal-Mart, and directs the Town Clerk to forward Final Parcel Map No. 19525 to the San Bernardino County Recorder for recordation.

6. Item Pulled.

7. Item Pulled

8. **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

9. **Receive and file** the End of Service Report related to the professional services contract for Museum Registrar activities.

10. **Adopt** Resolution No. 14- , approving the Measure I Five-Year Capital Improvement Plan and Expenditure Strategy for Fiscal Years 2014-15 to 2018-19 under Measure I 2010-2040

11. **Receive and file** the AB1234 Reporting Requirement Schedule for the month of May 2014

12. **Ratify** Payroll Register total of $130,219.68 dated May 23, 2014.
Ratify Warrant Register total of $84,458.99 for checks dated May 29, 2014

Mayor Lombardo opened public comments on the consent agenda.

Herb Orban, Yucca Valley spoke in opposition to the slurry project (Item 6) and objects to maintenance on a decent road, when other roads are in need of repair.

Gina Orban, Yucca Valley spoke in opposition to the slurry project (Item 6).

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

Council Member Abel moved to approve consent agenda items 3-5 and 8-12. 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

Item 6. Mayor Pro Tem Huntington explained the item was pulled to allow for staff comment. Town Project Engineer Qishta provided information of the slurry project, the different types of road construction and associated costs.

Council Member Abel inquired on the cost difference between maintaining a street with slurry or cape seal, instead of allowing the road to deteriorate to the point of needed more extensive repair. Abel also commented on the relationship with Hi Desert Water District and the scheduled road repairs in conjunction with the wastewater system project.

Mayor Pro Tem Huntington moved to approve 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; and authorize the Town Attorney, Mayor and Town Manager to sign all necessary agreements. Council Member Rowe seconded. Motion carried on a roll call vote.

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

Item 7. Administrative Services Director Yakimow introduced Administrative Assistant III Rice to present additional information on the IT award of contract process. Rice explained that the Town contracts for information technology services as a cost effective approach in providing a secure environment for the Town's computer network systems. The request for proposal was advertised on the Town's website, noticed in the local newspaper, distributed through contacts at the Yucca Valley Chamber of Commerce and directly mailed to interested companies.

Proposals were evaluated based on services and support provided, similar work experience in a similar environment, 24/7 support with minimal response time, cost of service and an innovative approach to IT management. With these criteria, staff recommends the award of contract to Southwest Networks, Inc.

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

Council Member Leone asked if the current contract was the same as prior contracts with this vendor.

Rowe inquired if local companies responded to the request for proposal. Rice reported that no local companies responded.

Mayor Pro Tem Huntington moved to approve 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. 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

PUBLIC HEARING

13. Resolution No. 14-21; Annual Assessment Engineer's Report for Previously Formed Street and Drainage and Landscape and Lighting Maintenance Districts Levying Annual Assessments upon Real Property within the Districts

Town Project Engineer presented the staff report on the Annual Assessment Engineer's Report for Previously Formed Street and Drainage and Landscape and Lighting Maintenance Districts.

The Town has formed Landscape and Lighting maintenance Districts and Street and Drainage (Benefit) Assessment Districts as a condition of development projects. The formation of these districts began in 2005 and there are nine maintenance districts in existence today. The assessment Engineers Report establishes the amount of annual assessment in each of the districts.

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

Council Member Leone sought confirmation that these assessments are for new development only.

Mayor Pro Tem Huntington commented on the assessment numbers, noting that there are minor adjustments from the prior year.

Council Member Abel moved to adopt Resolution No. 14-21, approving and confirming the assessments as set forth in the Engineer's Reports and declares its intent to levy and collect assessments upon real property within the existing districts for the 2014-15 tax year, and authorizes the levy of assessments as recommended in the Engineer's Reports. 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

DEPARTMENT REPORTS

14. Public Lands Highway Discretionary Funds Project (PLHD)
SR62, Apache Trail to Palm Avenue – Town Project No. 8661
Federal Project No. PLHL04-5466(015)
Contract Amendment; 2014-15 Budget Amendment
Black Rock Canyon Road; Additional Traffic Control

Town Project Engineer Qishta presented the staff report requesting an amendment to the PLHD contract with Matich Corporation to include repairs to Black Rock Canyon Road into the project scope. Pursuant to Town Council direction to bring Black Rock Canyon Road into the Town's Maintained Road System, staff has identified a temporary solution to bring the road to a drivable status. This involves eliminating potholes and deteriorated asphalt road surface by pulverizing the existing asphalt in place, followed by grading and compacting.

Continued research to acquire additional financial resources is necessary to construct a

typical asphalt concrete road. It is estimated that the temporary solution will require grading approximately every 2-3 months, and after significant storm events.

The requested amendment to the Matich contract also includes provisions to minimize the impact to traffic on SR 62 during construction. With temporary restriping, labor and equipment, the contractor will open both lanes of traffic at the end of each day and during the weekends.

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

Council Member Abel commented favorably on the inclusion of Black Rock Canyon Road into the maintained road system, and would like to see the road fully paved in the near future. Abel stated he is impressed with Matich and how quickly the company is moving along with the sidewalks.

Mayor Pro Tem Huntington inquired if the Black Rock Canyon Road repair includes any work on San Marino. Huntington also explained that this is not a permanent solution and would like to see agreements with the residents along Black Rock Canyon Road, with the understanding that the property owners will be responsible for certain aspects of the road maintenance.

Council Member Leone commented on the number of vehicles traveling along Black Rock Canyon Road and wished this was taken care of a long time ago. Leone also commented favorably on the work along the highway and the flexibility of opening and closing lanes at the appropriate times.

Mayor Pro Tem Huntington moved to:

- Approve a contract amendment per Section 1.10 of the original Contract between the Town of Yucca Valley and Matich Corporation to add Black Rock Canyon Road repair to the scope of work in the amount of $28,000, subject to easement acquisition on the east side of Black Rock Canyon Road;

- Amend the 2014/15 Adopted Budget to transfer $30,800 ($28,000 plus $2,800 contingency) from Fund 516 to Fund 527.

- Direct staff to return to the Town Council at the meeting of July 15, 2014 with the recommended area of improvement/maintenance for Black Rock Canyon Road and a Resolution establishing the timeline for accepting Black Rock Canyon Road into the Town's Maintained Road System;

- Direct staff to proceed with the amended traffic control plan enabling two open travel lanes for both east and west bound traffic on SR 62 at the end of each work day and on weekends

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

15. Resolution No. 14-22; Authorization of the Levy of a Special Service Tax upon Real Property within Community Facilities District (CFD) No. 11-1

Town Project Engineer Qishta presented the staff report for the authorization of the levy of a special service tax upon real property within CFD No. 11-1 As a legislative body, the Town Council by resolution as provided in section 53340 of the ACT, determines the specific special tax rate and amount to be levied for the current or future tax years. The special tax rate to be levied shall not exceed the maximum rate.

The Town has formed three such service areas included in CFD No. 1-1. These include Warren Vista Center CFD, Annexation Area No. 1, Improvement Area 1; Dollar General CFD, Annexation Area No. 1, Improvement Area 1; and, Super Wal-Mart CFD, Annexation Area No. 2, Improvement Area 3.

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

Council Member Leone Moved to adopt Resolution 14-22, authorizing the annual levy of special taxes for Community Facility District No. 11-1, for fiscal year 2014/2015. 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

16. Resolution No. 14-23; Budget Amendment; Recall Petition Summary

Town Clerk Copeland presented the staff report requesting a 2013-14 fiscal year budget amendment for unanticipated expenditures related to the recall petition process incurred during the fiscal year.

Mayor Lombardo opened public comments.

Charles McHenry, Yucca Valley commented on the costs associated with the attempted recall process.

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

Council Member Rowe moved to amend the FY 2013-14 Budget and adopt Resolution No. 14-23, appropriating $56,000 from the Undesignated Reserves for recall petition expenditures. Council Member Leone seconded. Motion carried 4-1 on a roll call vote with Mayor Lombardo voting no.

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

FUTURE AGENDA ITEMS

None Stated

PUBLIC COMMENTS

Mayor Lombardo opened public comments.

Charles McHenry, Yucca Valley invited the public to Brehm Park on July 4th to watch fireworks and to celebrate the holiday.

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

17. Council Member Abel announced his support of Hi Desert Water District's efforts in the upcoming election for the wastewater project assessments.
18. Council Member Rowe invited the public to the 4th of July celebration at Brehm Park and also spoke of support of Hi Desert Water District

19. Mayor Pro Tem Huntington commented on the necessity of the wastewater system assessments and is supportive of Hi Desert Water District's efforts on the project. Huntington also reported on his attendance at a recent Sports Council meeting and is impressed with all the activities that are going on in the community. Thanked the Youth Commission for their informative video.

20. Mayor Lombardo thanked the public for attending the meeting and stated he is also highly supportive of Hi Desert Water's efforts with the assessment vote for the wastewater system.

ANNOUNCEMENTS

There will not be a Town Council meeting on July 1, 2014 for lack of an agenda.

The next regularly scheduled meeting of the Town Council is 6:00 p.m. Tuesday, July 15, 2014 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. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (One (1) Potential Case)

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 8:05 p.m. with reportable action by unanimous vote to initiate litigation.

Respectfully Submitted,

Lesley Copeland, CMC
Town Clerk

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane Stueckle, Deputy Town Manager
Alex Qishta, Project Engineer
Date: July 1, 2014
For Council Meeting: July 15, 2014

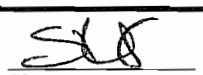
Subject: SR 62, Camino del Cielo to Acoma, Signal Synchronization Project – Town Project No. 8028
Congestion Mitigation Air Quality (CMAQ) Grant
Federal Project No. CMLN 5466(019)
Award of Construction Contract
DBX, Inc., Temecula, CA

Prior Council Review: The Town Council appropriated funds for this project with the adoption of the FY 2012/2013 and subsequent fiscal year Capital Projects Budgets. On February 21, 2012, the Town Council awarded a contract for professional design services to Albert Grover & Associates related to the design of Signal Synchronization Project and the preparation of Plans, Specifications and Estimates, including bid ready construction documents, in the amount of $48,750.

One May 20, 2014, the Town Council adopted a Resolution approves the plans and specifications for Project No. 8028, and authorized Town Clerk to advertise and receive bids.

Recommendation: That the Town Council awards the construction contract to DBX, Inc., in the amount of $49,600 and authorizes a construction contingency in the amount of $4,960, for a total contract amount of $54,560, authorizing the Mayor, Town Manager and Town Attorney to sign all necessary documents, and authorizing the Town Manager to expend the contingency fund, if necessary, to complete the project.

Executive Summary: The Town received an allocation of $226,000 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, Caltrans District 8, Office of Local Assistance, administers all federally funded transportation projects within the District. Federal standards require competitive bidding for the expenditure of CMAQ funds.

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

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

Order of Procedure:

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

Discussion: The grant funded project on SR 62, between Camino Del Cielo and Acoma Trail, provides funds to interconnect and synchronize the following traffic signals.

SR 62 @ Camino Del Cielo
SR 62 @ Kickapoo Trail
SR 62 @ Pioneertown Road/Deer Trail
SR 62 @ Acoma

Additionally, the traffic signal to be constructed with the PLHD project at SR 62 and Church Street, and the traffic signal constructed at SR62 and Inca Trail in calendar year 2012 will be connected to the synchronization system at the time of construction. The synchronization components at these locations are paid from remaining CMAQ grant funds or other Town Funds.

On June 26, 2014, the Town received 2 bids for Project No. 8028 as follows:

BIDDER	BASE BID
DBX, INC.	$49,600
Steiny and Company, Inc.	$51,870

The lowest apparent bidder is DBX, Inc. of Temecula, California, with a base bid of $49,600. The Town has reviewed all 2 bid packages and confirmed that DBX, Inc. is the lowest responsible and responsive bidder. If awarded by the Town Council, construction is anticipated to begin in August 2014, and to be substantially complete in late fall 2014.

Alternatives: Staff recommends no alternative action.

Fiscal impact: The following are the anticipated remaining expenditures for completion of the project.

Estimated Project Cost

Base Bid Amount	$49.600.00
Construction Contingency	$4,960.00
Total Contract Work	**$54,560.00**
Indirect Cost Recovery	$9,400.00
Additional Project Costs	$2,000.00
Total Project Cost Estimates	$65,960.00

Grant Summary (CMAQ)

Original Grant Funds Awarded	$226,000.00
Grant Fund Authorized – Design	$50,000.00
Grant Funds Spent to date – Design	$41,451.00
Grant Funds Remaining – Design	$8,549.00
Grant Funds Authorized for Construction – Phase 1	$68,689.00
Grant Funds Allocated with Award of Bid – Phase 1	$65,960.00
Grant Funds Remaining – Phase 1 (est.)	$2,729.00
Grant Funds Allocated to Date – Design and Phase 1	$118,689.00
Remaining Grant Funds for Future Design and Construction	$107,311.00

Attachments:
Bidders Summary List
DBX, INC. Bid
Staff Report, May 20, 2014
CIP Page
2014/2015 Adopted Budget.

TOWN OF YUCCA VALLEY
BID OPENING LOG SHEET

BID OPENING DATE: June 26, 2014, 3:00 p.m.

PROJECT DESCRIPTION:
Traffic Control Signal Synchronization Project
Town Project No. 8028

	BIDDER	BID AMOUNT	BID BOND
1.	Steiny and Company, Inc.	51,870.00	10%
2.	DBX, Inc.	49,600.00	10%
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Allison Brucker
Allison Brucker
Administrative Assistant II for:

Lesley Copeland
Lesley Copeland
Town Clerk

CC: Town Clerk (1)
Initiating Department (2)

CONTRACTOR'S PROPOSAL

DBX, Inc
Company

42024 Avenida Alvarado, suite A
Address

Temecula, CA 92590

951-296-9909
Telephone Number

240547 A, C10
State License Number

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

Ladies and Gentleman:

Pursuant to the Public Notice inviting bids or proposals, the undersigned declares that he has carefully examined the location of the proposed work, that he has examined plans, profiles,, and specifications for **Project 8028: SR-62 Traffic Control Synchronization Project** and read the accompanying proposal requirement, and hereby proposes to furnish all materials and do all work required to complete the said work in accordance with said plans, profiles, specifications, and special provisions for the unit or lump sum price set forth in the Schedule of Work Items.

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

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

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

Item No. of Work	Name of Firm or Contractor	Location of Mill, Shop or Office	Contractor Classification (if applicable)	Town of Yucca Valley Business License No. *
	none			

All Subcontractors are required to obtain a Town of Yucca Valley Business License before a Notice to Proceed may be issued. All subcontractors must have a valid contractor license issued by the State of California and in good standing.

The undersigned further agrees that in case of default in executing the required contract with necessary bonds within **ten (10) calendar days** after the notice of award of contract has been mailed, the proceeds of the check or bond accompanying his bid shall become the property of the Town. If the Town awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. The undersigned further agrees to complete the work within **Thirty (30) calendar days** from the execution of the first contract. **Project must be completed by September 30, 2014.**

Contractor, and any subcontractors utilized, shall be licensed in accordance with the provisions of the Contractor's License Law, Chapter 9 of Division 3 of the State Business and Professions Code.

Additionally, the Contractor must have at the time of bid opening for this project the following classification(s) of Contractor's license and experience:

Classification C-10: Electrical Contractor

Classification A: General Contractor

SCHEDULE OF WORK ITEMS "A"

Project No. 8028
SR-62 Traffic Control Synchronization Project

ITEM NO.	QUANTITY	UNIT	DESCRIPTION WITH UNIT PRICE *WRITTEN IN WORDS*	UNIT PRICE IN FIGURES	AMOUNT
1	1	LS	Traffic Control and Safety Five hundred dollars	500.00	500.00
2	4	EA	Furnish and Install 2070L Local Controller Unit (must be purchased from the State) three thousand dollars	3,000.00	12,000.00
3	1	EA	Furnish and Install Field Master Controller Unit(must be purchased from the State) Four thousand dollars	4000.00	4000.00
4	2	EA	Furnish and Install GPS Unit and Antenna one thousand Five hundred dollars	1500.00	3000.00
5	3	EA	Furnish and Install Encom Wireless Radio Five thousand dollars	5000.00	15,000.00
6	1	EA	Furnish and Install Encom Wireless Dual Radio Six thousand dollars	6000.00	6000.00
7	2	EA	Furnish and Install Cellphone Modem Eight hundred dollars	800.00	1600.00
8	5	EA	Furnish and Install Ethernet Switch and Power Strip one thousand Five hundred dollars	1500.00	7500.00

TOTAL PRICE FOR ITEMS 1-8

49,600.00

TOTAL PRICE IN WORDS:

Fortynine thousand six hundred dollars and zero cents

BIDDER: DBX, Inc

BY: [signature] **DATE** 6/24/14

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

DBX, Inc

Jim Perry, President

Jim Perry, Sec/Treas

James C. Perry, Vice President

42024 Avenida Alvarado, Suite A

Temecula, CA 92590

Business Address

Dated: June 24, 2014

By: [signature]

By: [signature]

By:

NON-COLLUSION AFFIDAVIT

To: The Town of Yucca Valley:

State of California)
) ss.
County of Riverside)

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

Jim Perry
Signature

STATE OF CALIFORNIA)
) ss.
COUNTY OF Riverside)

PHYLLISSA MARTZ
Commission # 1985150
Notary Public - California
Riverside County
My Comm. Expires Aug 11, 2016

Subscribed and sworn to before me this 24 day of June, 2014

Phyllissa Martz
Notary Public in and for the County of Riverside, State of California.

My Commission expires August 11, 2016.

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

The undersigned contractor, certifies and declares that:

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

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

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

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

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

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

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24 day of June, ~~2013~~ 2014, at Temecula, California.
(place of execution)

Signature

Jim Perry
Name (print or type)

President
Title

DBX, Inc
Name of company

EXHIBIT 15-G2 LOCAL AGENCY BIDDER DBE INFORMATION (CONSTRUCTION CONTRACTS)

(Inclusive of all DBEs including the UDBEs listed at bid proposal)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

LOCAL AGENCY: Town of Yucca Valley LOCATION: SR62

PROJECT DESCRIPTION: traffic signal synchronization

TOTAL CONTRACT AMOUNT: $ _____

BID DATE: June 26, 2014

BIDDER'S NAME: DBX, Inc

CONTRACT UDBE GOAL: none listed 0

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED (or contracted if the bidder is a DBE)	DBE CERT NO. AND EXPIRATION DATE	NAME OF EACH DBE (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE
	none			

For Local Agency to Complete:

Local Agency Contract Number: _____

Federal-aid Project Number: _____

Federal Share: _____

Contract Award Date: _____

Local Agency certifies that all DBE certification have been verified and information is complete and accurate.

Print Name Local Agency Representative | Signature | Date

(Area Code) Telephone Number: _____

Total Claimed DBE Participation $ _____ %

Signature of Bidder

6/24/14 Date

951-296-9909 (Area Code) Tel. No.

lisa martz Person to Contact (Please Type or Print)

For Caltrans Review:

Print Name Caltrans District Local Assistance Engineer | Signature | Date

Local Agency Bidder DBE Information (Construction Contracts) (Rev 6/26/09)

Distribution: (1) Copy – Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of contract execution. Failure to send a copy to the DLAE within 15 days of contract execution may result in de-obligation of funds for this project.
(2) Copy – Include in award package to Caltrans District Local Assistance
(3) Original – Local agency files

INSTRUCTIONS - LOCAL AGENCY BIDDER DBE INFORMATION (CONSTRUCTION CONTRACTS)

SUCCESSFUL BIDDER:

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract UDBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces, if a DBE.The DBE shall provide a certification number to the Contractor and expiration date. Enter DBE prime and subcontractors certification number. The DBE contractors should notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number.

IMPORTANT: Identify all DBE firms participating in the project--including all UDBEs listed on the UDBE Commitment form (Exhibit 15-G1), regardless of tier. Names of the First-Tier DBE subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the DBE participation dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts) to determine how to count the participation of DBE firms.

Exhibit 15-G2 must be signed and dated by the successful bidder. Also list a phone number in the space provided and print the name of the person to contact.

Local agencies should complete the Local Agency Contract Number, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all informations is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

EXHIBIT 15-H DBE INFORMATION—GOOD FAITH EFFORTS

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The _____(City/County of)_____established a Disadvantaged Business Enterprise (DBE) goal of _____% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement

B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates

C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount ($)	Percentage Of Contract

D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

EXHIBIT 12-B BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE)

PART I

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.054 of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. Photocopy this form for additional firms.

Firm Name/ Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address None		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)

Distribution: 1) Original - Local Agency File

EXHIBIT 12-B BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE)

PART II

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 26 of the Code of Federal Regulations. Photocopy this form for additional firms.

Firm Name/ Address/ City, State, ZIP	Phone/ Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address none		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)
Name	*Phone*	☐ <$1 million		☐ YES
		☐ <$5 million		☐ NO
Address		☐ <$10 million		*If YES list DBE #:*
	Fax	☐ <$15 million		
City State ZIP		☐ >$15 million		Age of Firm (Yrs.)

Distribution: 1) Original – Local Agency File

TOWN of YUCCA VALLEY

NON-DEBARMENT CERTIFICATION

1. Instructions for Certification.

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why they cannot provide the certification set out below. The certification or explanation will be considered in connection with the Town's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Town determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the Town to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Town or agency entering into this transaction.

6. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this

covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals.

8. Nothing contained in the foregoing shall be construed to require establishment of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Expect for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower Tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies to the Federal Government, the Town may terminate this transaction for cause or default.

11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

STATE OF California]

STATE OF California]

Jim Perry being first
(President or duly authorized Company official)

duly sworn deposes and says that he is President

_____ of DBY, Inc
(official capacity)

_____ with the intention of becoming
(name of company)

a primary participant on Town of Yucca Valley Construction.

Project 8028
(Project Number)

and that he certifies to the best of his knowledge and belief that said company and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property:

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification: and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Further affiant sayeth not.

(Signature)

Jim Perry
(Print Name)

SUBSCRIBED AND SWORN to before me a notary public this 24

Day of June, 2014

Phyllissa Martz
Notary Public

My commission expires: Aug. 11, 2016

PHYLLISSA MARTZ
Commission # 1985150
Notary Public - California
Riverside County
My Comm. Expires Aug 11, 2016

NDC-3

NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

CERTIFICATION ON NON-LOBBYING ACTIVITIES

CERTIFICATION FOR CONTRACTS, GRANTS, AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the Award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Jim Perry
NAME

6/24/14
DATE

President
TITLE

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: ☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action: ☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type: ☐
a. initial
b. material change

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity

☐ Prime ☐ Subawardee
Tier _____, if known

Congressional District, if known

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable _____

8. Federal Action Number, if known: none

9. Award Amount, if known:

10. a. Name and Address of Lobby Entity
(If individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a)
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

11. Amount of Payment (check all that apply)
$ _____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment (check all that apply)
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify _____

14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) if necessary)

15. Continuation Sheet(s) attached: Yes ☐ No ☐

16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: Jim Perry

Print Name: Jim Perry

Title: President

Telephone No.: 9512966909 Date: 6/24/14

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

Standard Form LLL Rev. 09-12-97

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.
    (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

SF-LLL-Instructions Rev. 06-04-90-«END_FI»

The Guarantee Company of North America USA
1800 Sutter Street, Suite 735, Concord, CA 94520

BID BOND

BOND NO. 8-B Premium: Nil

KNOW ALL MEN BY THESE PRESENTS, That we, DBX, Incorporated

as Principal, and The Guarantee Company of North America USA, a corporation duly organized under the laws of the State of Michigan, as Surety, are held and firmly bound unto Town of Yucca Valley

as Obligee, in the sum of Ten Percent of Amount bid ($ 10%) Dollars

for the payment of which Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Principal has submitted a bid for

Signal Synchronization Project: SR62, Camino del Cielo to Acoma Avenue Project No. 8028 Federal Aid Project #CMLN-5466(019)

NOW, THEREFORE, if the Obligee accepts the bid of the Principal and the Principal enters into a Contract with the Obligee for the Project; or, if the Principal pays the Obligee the amount of this Bond or the difference between Principal's bid and the next lowest bid for the Project, whichever is less: this obligation is null and void, otherwise to remain in full force and effect.

Signed and sealed this 20th day of June, 2014.

(Witness)

BY: DBX, Incorporated
Principal

ITS: President

The Guarantee Company of North America USA

(Witness)

BY: Richard A. Coon
Richard A. Coon Attorney-In-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside

On 6/24/14 (Date) before me, Phyllissa Martz, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Jim Perry (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.

PHYLLISSA MARTZ
Commission # 1985150
Notary Public - California
Riverside County
My Comm. Expires Aug 11, 2016

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: Phyllissa Martz (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jim Perry	Signer's Name:
☒ Corporate Officer — Title(s): President	☐ Corporate Officer — Title(s):
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On 6-20-14 (Date) before me, Jan C. Moran, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Richard A. Coon (Name(s) of Signer(s)),

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

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

WITNESS my hand and official seal.

JAN C. MORAN
COMM. #1967021
NOTARY PUBLIC • CALIFORNIA
ORANGE COUNTY
Comm. Exp. FEB. 17, 2016
MGC1 MGC1

Signature Jan C. Moran (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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THE GUARANTEE COMPANY OF NORTH AMERICA USA

Southfield, Michigan

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS: That THE GUARANTEE COMPANY OF NORTH AMERICA USA, a corporation organized and existing under the laws of the State of Michigan, having its principal office in Southfield, Michigan, does hereby constitute and appoint

David L. Culbertson, Charles L. Flake, Richard A. Coon
Culbertson Insurance Services, Inc.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise.

The execution of such instrument(s) in pursuance of these presents, shall be as binding upon THE GUARANTEE COMPANY OF NORTH AMERICA USA as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at the principal office.

The Power of Attorney is executed and may be certified so, and may be revoked, pursuant to and by authority of Article IX, Section 9.03 of the By-Laws adopted by the Board of Directors of THE GUARANTEE COMPANY OF NORTH AMERICA USA at a meeting held on the 31st day of December, 2003. The President, or any Vice President, acting with any Secretary or Assistant Secretary, shall have power and authority:

1. To appoint Attorney(s)-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof; and
2. To revoke, at any time, any such Attorney-in-fact and revoke the authority given, except as provided below
3. In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.
4. In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner – Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of the Company adopted at a meeting duly called and held on the 6th day of December 2011, of which the following is a true excerpt:

RESOLVED that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, contracts of indemnity and other writings obligatory in the nature thereof, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, THE GUARANTEE COMPANY OF NORTH AMERICA USA has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 23rd day of February, 2012.

THE GUARANTEE COMPANY OF NORTH AMERICA USA

STATE OF MICHIGAN
County of Oakland

Stephen C. Ruschak, Vice President

Randall Musselman, Secretary

On this 23rd day of February, 2012 before me came the individuals who executed the preceding instrument, to me personally known, and being by me duly sworn, said that each is the herein described and authorized officer of The Guarantee Company of North America USA; that the seal affixed to said instrument is the Corporate Seal of said Company; that the Corporate Seal and each signature were duly affixed by order of the Board of Directors of

Cynthia A. Takai
Notary Public, State of Michigan
County of Oakland
My Commission Expires February 27, 2018
Acting in Oakland County

IN WITNESS WHEREOF, I have hereunto set my hand at The Guarantee Company of North America USA offices the day and year above written.

Cynthia A. Takai

I, Randall Musselman, Secretary of THE GUARANTEE COMPANY OF NORTH AMERICA USA, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by THE GUARANTEE COMPANY OF NORTH AMERICA USA, which is still in full force and effect.

IN WITNESS WHEREOF, I have thereunto set my hand and attached the seal of said Company this 20th day of June , 2014.

Randall Musselman, Secretary

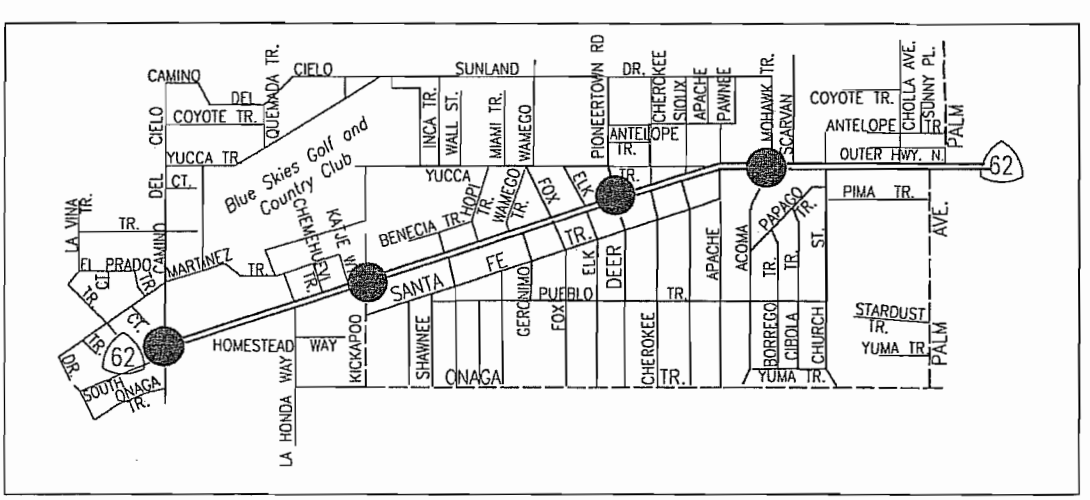
SR62: TRAFFIC CONTROL SYNCHRONIZATION
Fiscal Year 2013-2014

Project No.	**8028**
Category:	**Streets & Highways**
Description:	Congestion Management Air Quality (CMAQ) funds: Synchronization of four (4) traffic signals on SR62 at the intersections of Camino del Cielo, Kickapoo Trail, Deer Trail/Pioneertown Road, Acoma/Mohawk to mitigate and reduce traffic congestion and delay through improved traffic signal timing, improved traffic flow and reduction in idling time resulting in improved air quality through a reduction in VOC, NOx, PMx and CO emissions.
Limit:	State Route 62 between Kickapoo Trail and Acoma Trail
Status:	Pending Caltrans approval on Request to Proceed with Construction
Schedule:	

Project Cost Estimate

PA&ED	N/A
PS&E	48,750
ROW/Property Acquisition	N/A
Construction	177,250
Total	**226,000**

Fund Source	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18
Federal CMAQ 542	187,250				
Total:	**187,250**				



Town of Yucca Valley
FY 2014-16 Adopted Budget
Special Revenue Funds

		2012-13	2013-14		2014-15	2015-16
		Year-end Actual	Amended Budget	Projected Actual	Adopted Budget	Adopted Budget
542 - CMAQ						
RECEIPTS						
State Reimbursement	Federal FHWA 4830	$ 29,670	$ 187,250	$ -	$ 187,250	$ -
		-	-	-	-	-
TOTAL RECEIPTS		29,670	187,250	-	187,250	-
EXPENDITURES						
Indirect Cost		-	-	-	-	-
TOTAL EXPENDITURES		-	-	-	-	-
CAPITAL OUTLAY						
Work in Progress		20,640	187,250	100	307,150	-
TOTAL CAPITAL OUTLAY		20,640	187,250	100	307,150	-
OPERATING TRANSFERS IN (OUT)						
Transfer IN - Fund 516	4999	-	-	-	120,000	-
TOTAL OPERATING TRANSFERS IN (OUT)		-	-	-	120,000	-
INCREASE (DECREASE) IN FUND BALANCE		9,030	-	(100)	100	-
BEGINNING FUND BALANCE		(9,030)	-	-	(100)	-
ENDING FUND BALANCE		$ -	$ -	$ (100)	$ -	$ -

Work in Progress Detail		2012-13	2013-14		2014-15	2015-16
Project	Account	Year-end Actual	Amended Budget	Projected Actual	Adopted Budget	Adopted Budget
Hwy 62 Signal Synchronization	542 55-59 8310 8028	20,640	187,250	100	307,150	-
		-	-	-	-	-
		20,640	187,250	100	307,150	-

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.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane Stueckle, Deputy Town Manager
Alex Qishta, Project Engineer
Date: July 3, 2014
For Council Meeting: July 15, 2014

Subject: SR62 & Dumosa Avenue Traffic Signal Project – Town Project No.8456
Approval of Plans and Specifications
Authorization to Advertise for Construction

Prior Council Review: On May 16, 2013, the Town Council adopted Resolution No.13-21 amending the 2012/2013 FY Budget, and awarded a contract for professional design services to Albert A. Webb Associates for the preparation of plans, specifications and estimates, including bid ready documents, for the design of the traffic signal project at SR 62 and Dumosa Avenue, in the amount of $72,262.00 and $3,738.00 for incidental charges (printing, mileage, postage) for a total of $76,000.

On June 18, 2013, the Town Council approved the Project Funding Agreement between the Town of Yucca Valley and the San Bernardino County Transportation Authority, C13161, for the construction of the Project

Recommendation: That the Town Council adopts the Resolution, approves the plans and specifications for Project No. 8456, and authorizes the Town Clerk to advertise and receive bids.

Executive Summary: Town Council authorization to advertise construction of capital projects is sought prior to staff proceeding with the advertising process. The bidding period for this project concludes on August 14, 2014. Bid recommendations will be made to the Town Council in August 2014, with the project construction commencing in October 2014.

Order of Procedure:

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

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

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

Discussion: The project consists of the construction of a traffic signal at the intersection of SR62 and Dumosa Avenue. The project also includes raised median construction on Dumosa Avenue south of SR62, as well as modifications to the existing turn pockets for east and west bound traffic on SR 62.

On April 24, 2013, the Morongo Basin Subarea approved the allocation of $471,000 in MLHP funds for the design and construction of the traffic signal at the intersection of SR 62 and Dumosa Avenue.

Caltrans has issued the encroachment permit for this project. The bidding period for this Project concludes on August 14, 2014. The award of bid recommendation will be made to the Town Council in August 2014. The construction period for this project is estimated at two month (60 days).

Project Plans & Specifications are on file in the Town Clerk's Office for review.

Alternatives: Staff recommends no alternative actions.

Fiscal impact: The following is the available funds for the project:

Fund 520, MLHP Funds	$471,000.00
Fund 507, Traffic Safety Allocation	$225,000.00
Total	**$696,535.00**
Design Contract Expenditures:	($76,000.00)
TOTAL Available Funds	**$590,353.00**

The construction cost estimate for the project is $403,000 from Albert A. Webb Associates.

Attachments:

Notice Inviting Bids
Resolution No. 14-
5-16-13 Staff Report
5-16-13 Minutes
6-18-13 Staff Report
6-18-13 minutes
Budget Pages
CIP Page
SANBAG Agreement

NOTICE INVITING SEALED BIDS OR PROPOSALS

Pursuant to a Resolution of the Town Council of the Town of Yucca Valley, directing this notice, NOTICE IS HEREBY GIVEN that the said Town of Yucca Valley will receive at the Office of the Town Clerk in the Town Hall of the Town of Yucca Valley, on or before the hour of 3:00 o'clock P.M. on the **14th day** of **August, 2014**, sealed bids or proposals for the Construction of:

Project No. 8456, SR62 & Dumosa Avenue Signal Light Project

in said Town. Bids will be opened and publicly read immediately thereafter.

Bids must be made on a form provided for the purpose, addressed to the Town of Yucca Valley marked: Bid for Construction of

Project No. 8456, SR62 & Dumosa Avenue Signal Light Project

PREVAILING WAGE: Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, the Contractor is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required to and has determined such general prevailing rates of per diem wages. Copies of such prevailing rates of per diem wages are on file in the office of the Town Clerk, 57090 29 Palms Highway, Yucca Valley, California, and are available to any interested party on request. The Town also shall cause a copy of such determinations to be posted at the job site.

Pursuant to Labor Code § 1775, the Contractor shall forfeit, as penalty to the Town, not more than fifty dollars ($50.00) for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under the attached contract, by him or by any subcontractor under him, in violation of the provisions of said Labor Code.

In accordance with the provisions of § 1777.5 of the Labor Code, as amended, and in accordance with the regulations of the California Apprenticeship Council, properly indentured apprentices may be employed in the prosecution of the work.

Attention is directed to the provisions in §§ 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him.

SUBCONTRACTED WORK: The name and location of business of any subcontractor who will perform work exceeding 1/2 of 1% of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater, must be submitted with the bid. Any other information regarding the foregoing subcontractors that is required by Town to be submitted may be submitted with the bid, or may be submitted to Town up to 24 hours after the deadline established herein for receipt of bids. The additional information must be submitted by the bidder to the same address and in the same form applicable to the initial submission of bid.

INELIGIBLE SUBCONTRACTORS: The successful bidder shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to Section 1999.1 or 1777.7 of the Labor Code.

YOU MUST SUBMIT with your proposal cash, cashier's check, certified check, or bidder's bond, payable to the Town of Yucca Valley in an amount equal to at least ten percent (10%) of the bid as a guarantee that the bidder will enter into the contract if the same is awarded to him, and in the event of failure to enter into such contract said cash, cashier's check, certified check, or bond shall become the property of the Town of Yucca Valley. If the Town of Yucca Valley awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied to the difference between the low bid and second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

The Contractor shall be required to post a bond in the amount of 100% of the contract price and a labor and material bond equal to 50% of the contract price. No proposal will be considered from a Contractor who is not licensed as a Class "**A**" or **"C1"**contractor, at time of bid, or to whom a proposal form has not been issued by the Town of Yucca Valley.

The work is to be done in accordance with the plans and specifications on file in the Office of the Town Clerk. Copies of the plans and specifications will be furnished upon application to the Town and payment of **$55.00** which sum is nonrefundable. Upon written request, copies of the plans and specifications will be mailed when said request is accompanied by payment stipulated above, together with a nonrefundable payment of **$15.00** to cover mailing charges and overhead.

The Contractor may, upon the Contractor's request and the Contractor's sole cost and expense, substitute authorized securities in lieu of moneys withheld (performance retention).

The successful bidder will be required to enter into a contract satisfactory to the Town of Yucca Valley. The Town of Yucca Valley reserves the right to reject any and all bids, or to waive any irregularities in the bids.

By order of the Town Council this 15th day of July 2014.

By:_____
Town Clerk
Town of Yucca Valley

RESOLUTION NO. 14-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY APPROVING PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION OF THE SR62 & DUMOSA AVENUE SIGNAL LIGHT PROJECT, IN SAID TOWN AND AUTHORIZING AND DIRECTING THE TOWN CLERK TO ADVERTISE TO RECEIVE BIDS.

WHEREAS, It is the intention of the Town of Yucca Valley to construct certain improvements in the Town; and

WHEREAS, The Town has prepared plans and specifications for the construction of certain improvements.

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

SECTION 1: That the plans and specifications presented to the Town Council are hereby approved as the plans and specifications for: **SR62 & DUMOSA AVENUE SIGNAL LIGHT PROJECT, PROJECT NO.8456.**

SECTION 2: That the Town Clerk is hereby authorized and directed to advertise as required by law for the receipt of sealed bids or proposals for doing of the work specified in the aforesaid plans and specifications, which said advertisement shall be in form and content as approved by the Town Attorney and a copy of this Resolution shall be contained in each specification package for the work.

"NOTICE INVITING SEALED BIDS OR PROPOSALS"

Pursuant to a Resolution of the Town Council of the Town of Yucca Valley, directing this notice, **NOTICE IS HEREBY GIVEN** that the said Town of Yucca Valley will receive at the Office of the Town Clerk in the Town Hall of the Town of Yucca Valley, on or before the hour of 3:00 P.M. **on the August 14th , 2014** sealed bids or proposals for the construction of:

SR62 & DUMOSA AVENUE SIGNAL LIGHT PROJECT, PROJECT NO.8456.
Bids will be opened and publicly read immediately thereafter.

Bids must be made on a form provided for the purpose, addressed to the Town of Yucca Valley marked: Bid for Construction of:
SR62 & DUMOSA AVENUE SIGNAL LIGHT PROJECT, PROJECT NO.8456.

PREVAILING WAGE: Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, the Contractor is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required to and has determined such general prevailing rates of per diem wages. Copies of such prevailing rates of per diem wages are on file in the office of the Town Clerk, 57090 29 Palms Highway, Yucca Valley, California, and are available to any interested party on request. The Town also shall cause a copy of such determinations to be posted at the job site.

Pursuant to Labor Code § 1775, the Contractor shall forfeit, as penalty to the Town, not more than fifty dollars ($50.00) for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under the contract, by him or by any subcontractor under him, in violation of the provisions of said Labor Code.

In accordance with the provisions of § 1777.5 of the Labor Code, as amended, and in accordance with the regulations of the California Apprenticeship Council, properly indentured apprentices may be employed in the prosecution of the work.

Attention is directed to the provisions in §§ 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him.

§ 1777.5, as amended, requires the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

A. When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days prior to the request for certificate, or

B. When the number of apprentices in training in the area exceeds a ratio of one to five, or

C. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or

D. When the Contractor provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The Contractor and subcontractor under him shall comply with the requirements of §§ 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, *ex-officio* the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract and the Contractor and any subcontractor under him shall comply with and be governed by the laws of the State of California having to do with working hours as set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

The Contractor shall forfeit, as a penalty to the Town, twenty-five dollars ($25.00) for each laborer, workman, or mechanic employed in the execution of the contract, by him or any subcontractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight (8) hours in violation of said Labor Code.

Contractor agrees to pay travel and subsistence pay to each workman needed to execute the work required by this contract as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code § 1773.8.

The bidder must submit with his proposal cash, cashier's check, certified check, or bidder's bond, payable to the Town for an amount equal to at least ten percent (10%) of the amount of said bid as a guarantee that the bidder will enter into the proposed contract if the same is awarded to him, and in event of failure to enter into such contract said cash, cashier's check, certified check, or bond shall become the property of the Town.

If the Town awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the Town to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder.

The amount of the bond to be given to secure a faithful performance of the contract for said work shall be one hundred percent (100%) of the contract price thereof, and an additional bond in an amount equal to one hundred (100%) of the contract price for said work (except as otherwise modified in the General Provisions section of the contract documents) shall be given to secure the payment of claims for any materials or supplies furnished for the performance of the work contracted to be done by the Contractor, or any work or labor of any kind done thereon, and the Contractor will also be required to furnish a certificate that he carries compensation insurance covering his employees upon work to be done under contract which may be entered into between him and the said Town for the construction of said work.

No proposal will be considered from a Contractor who is not properly licensed as required by the Notice Inviting Bids at time of bid in accordance with the provisions of the Contractor's License Law (California Business and Professions Code, § 7000, *et seq.*) and rules and regulations adopted pursuant thereto or to whom a proposal form has not been issued by the Town.

The work is to be done in accordance with the profiles, plans, and specifications of the Town of Yucca Valley on file in the Office of the Town Clerk. Copies of the plans and specifications will be furnished upon application to the Town and payment of **$55.00**, said $55.00 is nonrefundable.

Upon written request by the bidder, copies of the plans and specifications will be mailed when said request is accompanied by payment stipulated above, together with an additional non-reimbursable payment of **$15.00** to cover the cost of mailing charges and overhead.

The successful bidder will be required to enter into a contract satisfactory to the Town.

In accordance with the requirements of the General Provisions, as set forth in the Plans and Specifications regarding the work contracted to be done by the Contractor, the Contractor may, upon the Contractor's request and at the Contractor's sole cost and expense, substitute authorized securities in lieu of moneys withheld (performance retention).

The Town of Yucca Valley reserves the right to reject any and all bids.

ADOPTED AND APPROVED this 15th day of July, 2014.

MAYOR

ATTEST:

TOWN CLERK

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

Item 5- Rejection of One (1) Claim

Town Manager Nuaimi introduced the item regarding the submission of one claim by Friederich Koenig on April 25, 2013. Council Member Leone moved to take this item into closed session for discussion. Council Member Huntington seconded. Motion carried, 5-0 on a roll call vote.

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

Item 8- Budget Amendment, Professional Services Agreement, Design Services, SR 62 @ Dumosa Ave Traffic Signal Project, Albert A. Webb Associates, San Bernardino Associated Governments, Major Local Highways Program Funding, Resolution

Town Manager Nuaimi reported on the item, explaining the process for awarding the professional services agreement for the design of the traffic signal slated for SR 62 at Dumosa Avenue.

Mayor Pro Tem Lombardo questioned the cost involved if the alternative suggestion by Mr. Cohen was implemented. Nuaimi explained the traffic flow patterns in the vicinity of the senior housing project and the Town Hall complex.

Council Member Huntington inquired about the bidding process for the design services.

Council Member Leone voiced concern with the proposed changes in traffic flow patterns around the Yucca Valley Community Center and expressed that this is the first time hearing that the plan was to limit thru-traffic on Antelope Trail. Leone recommended not having a signal at the Dumosa Ave location.

Council Member Rowe explained that Town Council has had prior discussion on the traffic on Antelope Trail and has received input from residents living on the street. Rowe also asked for clarification on the obligation toward the senior housing project related to the Dumosa signal.

Mayor Abel asked about the traffic signal synchronization program schedule. Deputy Town Manager Stueckle explained that the project plans are approved, the project is fully funded, and waiting for a federal funding letter to move forward. Abel mentioned that he supports the Dumosa signal for additional pedestrian control, especially with the senior housing project, park visitors, and shopping center visitors in this highly used area.

Council Member Huntington commented that there are alternate traffic patterns being proposed such as those included in the Compass Blueprint Civic Center Plan and expressed that he is not concerned about SANBAG approval.

Council Member Leone moved to wait on approving the SR 62 at Dumosa Avenue signal until approval is received from SANBAG. Motion died for a lack of second.

Council Member Leone moved to wait on approving the SR 62 at Dumosa Ave signal until the public has more time to comment on the changes to traffic flow on Antelope Trail. Motion died for a lack of second.

Council Member Huntington moved to Adopt Resolution No. 13-21 amending the 2012/2013 FY Budget, and award a contract or professional design services to Albert A. Webb Associates for the preparation of plans, specifications and estimates, including bid ready documents, for the design of the traffic signal project at SR 62 and Dumosa Avenue, in the amount of $72,262.00 and $3,738.00 for incidental charges (printing, mileage, postage) for a total of $76,000, and authorize the Town Manager, Town Attorney, and the Mayor to sign all necessary documents to complete the project. Council Member Rowe seconded. Motion carried on a 4-1 roll call vote.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, APPROPRIATING MEASURE I FUND 522, MAJOR ARTERIAL FUNDS, FOR THE PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATES FOR THE SR 62 AT DUMOSA AVENUE TRAFFIC SIGNAL FOR EXPENDITURES PRIOR TO SAN BERNARDINO ASSOCIATED GOVERNMENTS PROJECT FUNDING

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

Item 9- Resolution in Support of H.R. 1676 the Johnson Valley National Off-Highway Vehicle Recreation Area Establishment Act

Town Manager Nuaimi presented the staff report, explaining HR 1676.

Council Member Leone moved to approve Resolution No. 13-22 in support H.R. 1676, the Johnson Valley National Off-Highway Vehicle Recreation Area Establishment Act. Council Member Lombardo seconded. Motion carried 5-0 on a voice vote.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, IN SUPPORT OF H.R. 1676, THE JOHNSON VALLEY NATIONAL OFF HIGHWAY VEHICLE RECREATION AREA ESTABLISHMENT ACT

an RFP before returning the information technology contract in the future. Council Member Lombardo seconded. Motion carried 5-0 on a voice vote.

Item 9- SR62 @ Dumosa Traffic Signal Project: San Bernardino Associated Governments (SANBAG) Project Funding Agreement C13161

Council Member Leone stated he was in favor of the funding agreement with SANBAG for the Dumosa Signal, but was opposed to the closure of Antelope Trail.

Fritz Koenig, Yucca Valley spoke in opposition of the Dumosa traffic signal.

Council Member Rowe moved to approve Project Funding Agreement C13161 between the Town of Yucca Valley and SANBAG. Council Member Huntington seconded. Motion carried on a 4-1 voice vote.

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

PUBLIC HEARING

12. **Resolution No. 13-24, Annual Assessment Engineer's report for Previously Formed Street and Draining and Landscape & Lighting Maintenance Districts Levying Annual Assessments Upon Real Property Within the Districts.**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA CONFIRMING THE ASSESSMENTS AS SET FORTH IN THE ENGINEER'S REPORTS FOR LANDSCAPE AND LIGHTING MAINTENANCE DISTRICTS AND STREET AND DRAINAGE MAINTENANCE DISTRICTS AND DECLARING ITS INTENT LEVY AND COLLECT ASSESSMENTS UPON REAL PROPERTY WITHIN SAID DISTRICTS FOR THE 2013-14 TAX YEAR

Mayor Abel opened the public hearing and questioned if the Town Clerk has any written communication regarding the street vacation. Deputy Town Clerk Copeland advised no written communication has been received.

Deputy Town Manager Stueckle presented the staff report and explained that before the annual assessment can be established, Town Council approval is necessary following a public hearing. The assessment of an annual fee upon properties within the district provides the revenue to offset the cost of maintenance of the public improvements necessary to serve the development.

With no on wishing to speak on the item, Mayor Abel closed the public hearing.

Council Member Leone questioned if homeowners are noticed that the levy will go into effect. Deputy Town Manager Stueckle explained that when the Assessment Districts are formed, the property owners vote on the initial levy. In subsequent years, if the annual levy were to exceed the maximum allowable charges as stated in the original levy, the property owners would be required to vote on the increase.

Council Member Leone moved to adopt the Resolution 13-24, approving and confirming the assessments as set forth in the Engineer's Reports and declares its intent to levy and collect assessments upon real property within the existing districts for the 2013-14 tax year, and authorizes the levy of assessments as recommended in the Engineer's Reports. Mayor Pro Tem Lombardo seconded. Motion carried 5-0 on a voice vote.

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

13. Resolution No. 13-25, Street Vacation SV-01-13, SR 62 Outer Highway North, SR 62 @ Dumosa Avenue 7,567 square feet relinquishment of the outer highway on SR 62. APN 0595-371-41

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA APPROVING STREET VACATION SV-01-13 VACATING THAT PORTION OF EASEMENT ON ASSESSOR'S PARCEL NO. 0595-371-41 AS IDENTIFIED IN THE ATTACHED LEGAL DESCRIPTIONS

Mayor Abel explained that the public hearing is a continuance of the June 4, 2013 Yucca Valley Town Council meeting. Abel questioned if the Town Clerk has any written communication regarding the Street Vacation SV-01-13 resolution. Deputy Town Clerk Copeland advised no written communication has been received.

Deputy Town Manager Stueckle presented the staff report and explained that the street vacation is an essential component for public utility accommodations.

With no one wishing to speak, Mayor Abel closed the public hearing.

Council Member Leone asked for clarification that the street vacation will not affect the restaurant located adjacent to Dumosa Ave. Deputy Town Manager Stueckle confirmed that the street vacation is on the west side of Dumosa.

Council Member Huntington moved to: 1) Approve the granting of an easement to the public for street and utility purposes for Dumosa Avenue, as described in Attachment "A" to this staff report, and authorizes the Mayor to sign the grant of easement, and directs the Town Clerk to record the easement with the San Bernardino County Recorder's Office. 2) As recommended by

Town of Yucca Valley
FY 2014-16 Adopted Budget
Special Revenue Funds

		2012-13	2013-14		2014-15	2015-16
		Year-end Actual	Amended Budget	Projected Actual	Adopted Budget	Adopted Budget
520 - Measure I - 2010-40 Regional Funds						
RECEIPTS						
Revenue SANBAG Regional Funds-MLHP	4164	$ -	$ 696,000	$ 350,000	$ 346,000	$ -
Interest		-	-	-	-	-
TOTAL RECEIPTS		-	696,000	350,000	346,000	-
EXPENDITURES						
Indirect Cost Recovery	7999	-	22,081	5,000	27,791	-
TOTAL EXPENDITURES		-	22,081	5,000	27,791	-
CAPITAL OUTLAY						
Work in Progress		-	441,535	100,000	555,825	-
TOTAL CAPITAL OUTLAY		-	441,535	100,000	555,825	-
OPERATING TRANSFERS IN (OUT)						
Transfer INT - Fund 507	4999	-	-	-	225,000	
Transfer OUT - Fund 513		-	(90,000)	(90,000)	-	-
Transfer OUT - Fund 522		-	(7,384)	(7,384)	-	-
Transfer OUT - Fund 527		-	(135,000)	(135,000)	-	-
TOTAL OPERATING TRANSFERS IN (OUT)		-	(232,384)	(232,384)	225,000	-
INCREASE (DECREASE) IN FUND BALANCE		-	-	12,616	(12,616)	-
BEGINNING FUND BALANCE		-	-	-	12,616	-
ENDING FUND BALANCE		$ -	$ -	$ 12,616	$ -	$ -

520 - Measure I - 2010-40 Regional Funds

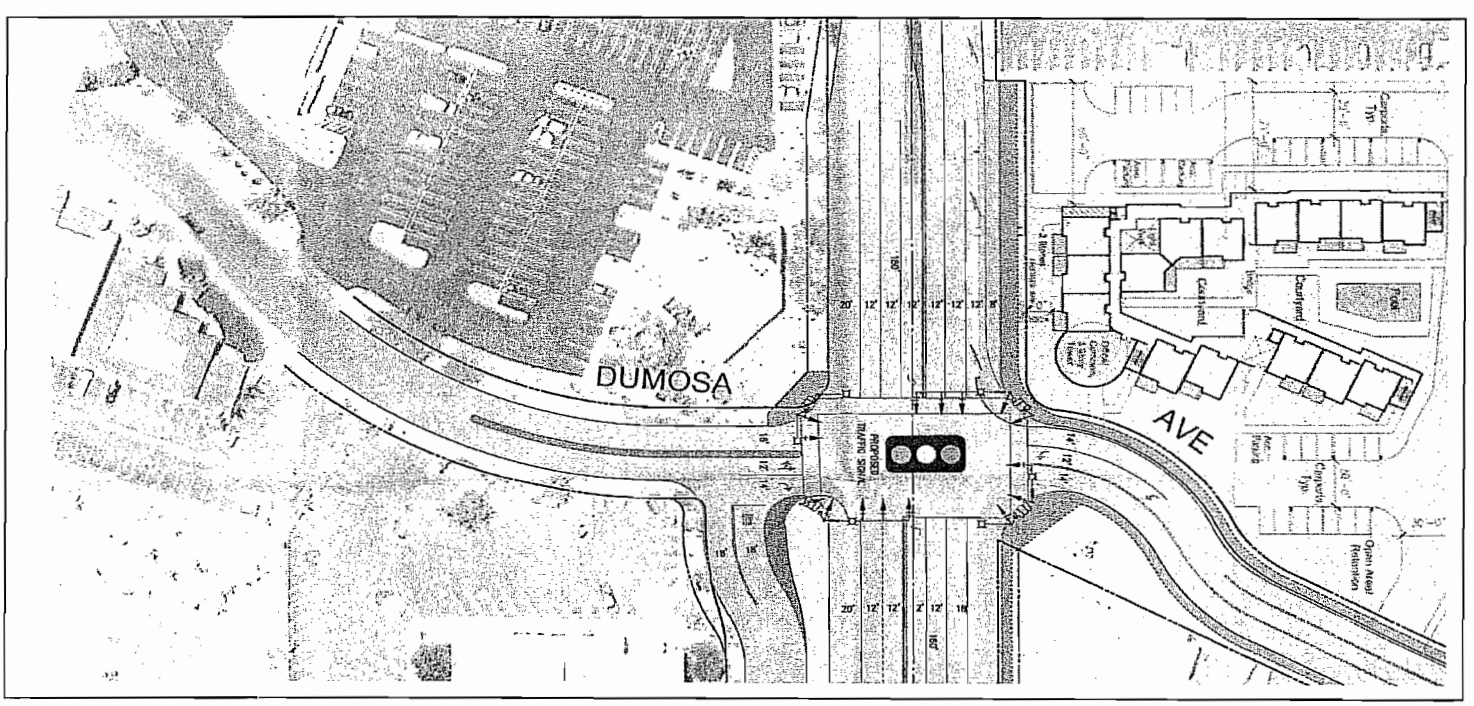
Work in Progress Detail		2012-13	2013-14		2014-15	2015-16
Project	Account	Year-end Actual	Amended Budget	Projected Actual	Adopted Budget	Adopted Budget
Dumosa Traffic Signal Design	520 55-59 8310 8456	-	441,535	100,000	555,825	-
		-	441,535	100,000	555,825	-

SR62 & DUMOSA AVENUE TRAFFIC SIGNAL
Fiscal Year 2014/2015

Project No:	**8456**
Category:	**Streets & Highways**
Description:	Construction of a traffic signal at SR62 and Dumosa Avenue including ADA compliant ramps, raised median construction on Dumosa Avenue south of SR62 and modifications to the existing turn pockets for east and west bound traffic on SR62.
Limit:	SR62 at Dumosa Avenue
Status:	Final plans submitted to Caltrans for approval – anticipate Mid-May 2014 approval.
Schedule:	

Project Cost Estimate	
PA/ED	N/A
PS&E	76,000
ROW/Property Acquisition	N/A
Construction	650,000
Total	**726,000**

Fund Source	Prior FY 2013/2014			FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
	Budget	Expended	Balance					
Regional Measure I 520	441,535	44,191	397,344	397,344				
Traffic Safety 507				255,000				
Total	**441,535**	**44,191**	**397,344**	**652,344**				



PROJECT FUNDING AGREEMENT C13161

BETWEEN

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

AND

TOWN OF YUCCA VALLEY

FOR

THE STATE ROUTE 62/DUMOSA AVENUE TRAFFIC SIGNAL PROJECT, TOWN OF YUCCA VALLEY

THIS Project Funding Agreement ("Agreement") is made and entered into this 10th day of July, 2013 by and between the San Bernardino County Transportation Authority (hereinafter referred to as "AUTHORITY") and the TOWN OF YUCCA VALLEY (hereinafter referred to as "TOWN"). AUTHORITY and TOWN shall be individually or collectively, as applicable, known as "Party" or "Parties."

RECITALS

A. The Measure I 2010-2040 Expenditure Plan and the Morongo Subarea transportation planning partners have identified projects eligible for partial funding from Measure I 2010-2040 Rural Mountain/Desert Subarea Major Local Highway Program ("MLHP") funds;

B. The Design, Right of Way, and Construction Phases of the State Route 62/Dumosa Avenue Traffic Signal Project in the TOWN ("PROJECT") is one of the projects identified as eligible for such funding and is described more fully in Attachment A;

C. AUTHORITY has determined that the PROJECT is eligible to receive the Rural Mountains/Desert Subarea MLHP funds;

D. On July 10, 2013, AUTHORITY's Board of Directors approved allocation of $471,000 in Rural Mountains/Desert Subarea MLHP funds to TOWN for the PROJECT;

E. This Agreement is to be carried out in accordance with the policies in the Measure I 2010-2040 Strategic Plan;

F. Parties desire to proceed with the PROJECT in a timely manner;

F. Parties desire to proceed with the PROJECT in a timely manner;

G. This Agreement is intended to delineate the duties and funding responsibilities of the Parties for the PROJECT; and

H. AUTHORITY and TOWN are entering into this Agreement with the understanding that AUTHORITY will reimburse TOWN for eligible PROJECT expenditures with MLHP funds.

NOW, THEREFORE, AUTHORITY and TOWN agree to the following:

SECTION I

AUTHORITY AGREES:

1. To reimburse TOWN for the actual cost of the PROJECT up to a maximum of $471,000 in MLHP Funds. An estimate of costs for the PROJECT is provided in Attachment B. AUTHORITY shall have no further responsibilities to provide any funding for PROJECT exceeding this amount.

2. To reimburse TOWN within 30 days after TOWN submits an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by TOWN up to a maximum of $471,000, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to AUTHORITY as frequently as monthly.

3. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of TOWN performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to AUTHORITY when planning and conducting additional audits.

4. AUTHORITY shall assign a project liaison for the purpose of attending Project Development Team (PDT) meetings.

SECTION II

TOWN AGREES:

1. To be the lead agency for this PROJECT and to diligently undertake and complete in a timely manner the Scope of Work for the PROJECT as shown in Attachment A.

2. To be responsible for expending that portion of the eligible PROJECT expenses that are incurred by TOWN, subject to reimbursement by AUTHORITY hereunder, for an amount not to exceed $471,000 in MLHP Funds, and are reimbursable by AUTHORITY in accordance with Section I, Paragraph 2. Expenses relative to time spent on the PROJECT by TOWN are considered eligible PROJECT expenses and may be charged to the PROJECT funds subject to AUTHORITY's guidelines.

3. To abide by all AUTHORITY, TOWN, County, State, and Federal laws, regulations, policies and procedures pertaining to the PROJECT.

4. To prepare and submit to AUTHORITY an original and two copies of signed invoices for reimbursement of eligible PROJECT expenses. Invoices may be submitted to AUTHORITY as frequently as monthly.

5. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to AUTHORITY or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of AUTHORITY during normal business hours at TOWN's TOWN Hall. Copies will be made and furnished by TOWN upon written request by AUTHORITY or CALTRANS.

6. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support TOWN's requests for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by TOWN.

7. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Final Report of Expenditures and final invoice no later than 120 days following the completion of those expenditures. An original and two copies of the Final Report of Expenditures shall be submitted to AUTHORITY and must state that these PROJECT funds were

used in conformance with this Agreement and for those PROJECT-specific work activities described.

8. To cooperate in having a PROJECT-specific audit completed by AUTHORITY, at AUTHORITY's option and expense, upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.

9. To repay to AUTHORITY any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within one hundred twenty (120) days of TOWN receiving notice of audit findings, which time shall include an opportunity for TOWN to respond to and/or resolve the findings. Should the findings not be otherwise resolved and TOWN fail to reimburse moneys due AUTHORITY within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both Parties, the AUTHORITY reserves the right to withhold future payments due TOWN from any source under AUTHORITY's control.

10. To include AUTHORITY in Project Development Team (PDT) meetings if and when such meetings are held and in related communications on PROJECT progress, to provide at least quarterly schedule updates to AUTHORITY, and to consult with AUTHORITY on critical issues relative to the PROJECT.

11. As an eligible PROJECT expense, to post signs at the boundaries of the PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of AUTHORITY and TOWN.

SECTION III

IT IS MUTUALLY AGREED:

1. To abide by all applicable Federal, State and Local laws and regulations pertaining to the PROJECT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the Effective Date of this Agreement.

2. The final PROJECT cost may ultimately exceed current estimates of PROJECT cost. Any additional eligible costs resulting from unforeseen conditions over the estimated total of the PROJECT cost, shall be borne by TOWN unless prior authorization has been approved by the AUTHORITY Board of Directors pursuant to Section III, Paragraph 3 of this Agreement;

3. In the event TOWN determines PROJECT work may exceed the not to exceed amount identified in Section I, Paragraph 1, TOWN shall inform AUTHORITY of this determination and thereafter the Parties shall work

together in an attempt to agree upon an amendment to the PROJECT amounts identified in this Agreement. In no event, however, shall AUTHORITY be responsible for PROJECT costs in excess of the PROJECT amounts identified herein absent a written amendment to this Agreement that is approved by the Parties.

4. Eligible PROJECT reimbursements shall include only those costs incurred by TOWN for PROJECT-specific work activities that are described in this Agreement and shall not include escalation or interest.

5. Neither AUTHORITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, TOWN shall fully defend, indemnify and save harmless AUTHORITY, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by TOWN under or in connection with any work, authority or jurisdiction delegated to TOWN under this Agreement. TOWN's indemnification obligation applies to AUTHORITY's "active" as well as "passive" negligence but does not apply to AUTHORITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

6. Neither TOWN nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless TOWN, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. AUTHORITY's indemnification obligation applies to TOWN's "active" as well as "passive" negligence but does not apply to TOWN's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

7. This Agreement will be considered terminated upon reimbursement of eligible costs by AUTHORITY or July 1, 2017, whichever is sooner, provided that the provisions of Paragraphs 6, 7, 8, 9 and 10 of Section II, and Paragraphs 5 and 6 of Section III, shall survive the termination of this Agreement. The Agreement may also be terminated by AUTHORITY, in its sole discretion, in the event the PROJECT work described in Attachment A has not been

initiated or let by TOWN within twelve (12) months of the Effective Date of this Agreement.

8. AUTHORITY may terminate this Agreement if TOWN fails to perform according to the terms of this Agreement and if this failure jeopardizes the delivery of the PROJECT according to the terms herein.

9. The Recitals to this Agreement are true and correct and are incorporated into this Agreement.

10. Attachment A, State Route 62/Dumosa Ave. Traffic Signal Project Description of Project and Milestones, and Attachment B, State Route 62/Dumosa Ave. Traffic Signal Project Funding Summary, are attached to and incorporated into this Agreement.

11. This Agreement is effective and shall be dated on the date executed by AUTHORITY.

----------SIGNATURES ON FOLLOWING PAGE----------

SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

By: _____
Janice Rutherford, Chairperson
W.E. Jahn

Date: _____

TOWN OF YUCCA VALLEY

By: _____
Merl Abel
Mayor

Date: _____

APPROVED AS TO FORM AND PROCEDURE:

By: _____
Eileen Monaghan Teichert
AUTHORITY General Counsel

Date: 9/5/13

By: _____
Jeffery Hill
Contract Administrator

Date: 8/5/13

APPROVED AS TO FORM AND PROCEDURE:

By: _____
Lona N. Laymon, Esquire
TOWN Counsel

ATTACHMENT A

STATE ROUTE 62/DUMOSA AVENUE TRAFFIC SIGNAL PROJECT, TOWN OF YUCCA VALLEY

Project Title
SR62/Dumosa Ave Traffic Signal
Location, Project Limits, Description, Scope of Work, Legislative Description
Construction of a traffic signal at the intersection of SR62 and Dumosa Avenue including ADA compliant ramps, raised median construction on Dumosa Ave south of SR62 and modifications to the existing turn pockets for east and west bound traffic on SR62.
Purpose and Need
The existing commercial shopping centers, Town Hall Complex and proposed 75 unit Senior Housing Development generates a highly traveled intersection by both pedestrians and vehicles. The purpose of the project is to provide safe and efficient interstate and interregional mobility of visitors and goods and an improved and safe transportation corridor through the Town of Yucca Valley for both visitors and local residents who use the route to access not only our public & commercial facilities, but also Joshua Tree National Park and the California Welcome Center as well as military vehicles accessing the Twentynine Palms Marine Corps Air Ground Combat Center.
Project Benefits
Project benefits include increased pedestrian safety, increased pedestrian and vehicular visibiilty resulting in a potential reduction of vehicular conflicts, installation of ADA compliant curb ramps, signalization, elimination of two way center left turn lane and construction of medians resulting in a reduction of vehicular turning movements and expanding existing turn lanes resulting in potential reduction in vehicular conflicts.

Project Milestone			**Proposed**
Project Study Report Approved			
Begin Environmental (PA&ED) Phase			06/01/13
Circulate Draft Environmental Document	**Document Type**	N/A	
Draft Project Report			08/01/13
End Environmental Phase (PA&ED Milestone)			08/01/13
Begin Design (PS&E) Phase			07/01/13
End Design Phase (Ready to List for Advertisement Milestone)			09/01/13
Begin Right of Way Phase			
End Right of Way Phase (Right of Way Certification Milestone)			
Begin Construction Phase (Contract Award Milestone)			03/01/14
End Construction Phase (Construction Contract Acceptance Milestone)			07/01/14
Begin Closeout Phase			07/01/14
End Closeout Phase (Closeout Report)			08/01/14

Description of Project and Milestones

ATTACHMENT B

STATE ROUTE 62/DUMOSA AVENUE TRAFFIC SIGNAL PROJECT, TOWN OF YUCCA VALLEY

Funding Summary

Component	Total Cost	AUTHORITY SHARE* - MLHP Funds	TOWN Local Measure I Funds
All Phases	$521,000	$471,000	$50,000
Total	**$521,000**	$471,000	$50,000

*AUTHORITY's Share can be from sources under control of AUTHORITY including but not limited to Measure I Major/Local Highways program, and State Transportation Improvement Program (STIP), or Surface Transportation Program (STP) without necessitating an amendment of this agreement.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Director of Administrative Services

Date: July 7, 2014
For Council Meeting: July 15, 2014
Subject: Telecommunication Services– Award of Contract

Recommendation: It is recommended that the Town Council review and approve the selection of TelePacific, Inc. to provide telecommunication services to the Town for a three-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
Call the Question (Roll call vote, consent agenda)

Discussion: Since incorporation, the Town of Yucca Valley has entered into renewing contracts with Verizon for provision of land-based telecommunication services, as Verizon was the sole provider of copper-based telecommunication services in the Morongo Basin. From time to time, the contracts were updated unilaterally by Verizon to align the service and cost structure with their technology standards, with the Town in a secondary negotiating position due to the sole source nature of the service provision.

In May 2014, Verizon notified the Town that the current contract arrangement would be terminated and replaced with a new contract that would incorporate revised technological changes. Additionally, the contract price for services would be increasing by approximately $4,000 annually, from $51,000 to $55,000. The proposed contract would be effective on or around July 1, 2014, and could be structured as a one to three year term.

As part of the Town's ongoing due diligence, staff reached out through its telecommunications consultant to identify if there were any alternatives to Verizon at this time. Through this process, staff confirmed that Verizon currently remains the sole source provider of copper-based telecommunications services. However, after researching all

Reviewed By:	Town Manager	Town Attorney	Mgmt Services	Dept Head

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

alternatives, staff was able to reach out to TelePacific, a firm providing copper-based telecommunications in the western states, and solicit a proposal for replacement services.

In late June, TelePacific submitted a proposal for new telecommunications services that represents a significant savings for the Town, while allowing the Town to continue to utilize its existing telephone systems, thereby extending the life of those systems. The proposed agreement will replace the existing Verizon services at an annual cost of $46,000, which equates to total annual savings of $9,000 over comparable Verizon services. While the firm is not currently a provider in the Morongo Basin, they would commence services with the assumption of the proposed contract.

The implementation of the proposed change is limited to back end modifications whereby there are no noticeable equipment changes. From the user's perspective, the goal is to provide a seamless transition. Other benefits associated with the transition to TelePacific include:

- Increase customer service access
- Streamlined billing options
- Similar municipal clients

As part of its due diligence, Town staff has contacted various clients of TelePacific for reference checks and recommendations. Comments and verifications received from the City of Indian Wells, Cathedral City, and College of the Desert have been positive and favorable.

Alignment with IT Master plan

During the FY 2014-16 budget process, staff identified the need for long-term financial planning related to the Town's telecommunication systems, as the current system is approaching 15 years old, and is facing obsolescence. There is a strong likelihood that the future update will be based upon both hardware and software transition from copper-based to voice over internet based communication. Any potential project will take a number of months to complete, and require significant financial resources. The proposed action will allow the Town to continue to use its existing equipment, at a savings over current rates, and will provide sufficient time to complete the overall hardware/software assessment in a coordinated and thorough manner, along with any related recommendations.

Alternatives: Reject the proposed contract, and remain with Verizon at the proposed increased cost.

Fiscal impact: The FY 2014-16 Adopted Budget provides approximately $57,000 annually for telecommunications services. The recommended action is accommodated by both the 2014-15 and 2015-16 budget.

Attachments: Draft Agreement Form
Pricing Matrix

Telecommunications Account Agreement

Must include Service Agreement

This Telecommunications Account Agreement (referred to as "Agreement" or "TAA") is made by and between U.S. TelePacific Corp., a California corporation, dba TelePacific Communications ("TelePacific", also referred to as "our, us, we"), having its principal place of business at 515 S. Flower Street, 47th Floor, Los Angeles, CA 90071-2201 and the Customer described below ("Customer" also referred to as "you, I"), pursuant to the TelePacific Terms and Conditions which are included in summary.

Section 1 Customer Information

Company Legal Name (Individual if Sole Proprietorship)	Town of Yucca Valley		
Doing Business As (DBA)			0
Legal Composition: ☐orporation ☐ole Proprietorship ☐neral Partnership LI☐ LI☐ State Organized:			
Officer/Owner Name		Title	
Officer/Owner Name		Title	
Main Service Address:	57090 29 Palms Highway		
City:	State:	ZIP Code:	
Yucca Valley	CA		92284
Billing Address (if different):	57090 29 Palms Highway		
City:	State:	ZIP Code:	
Yucca Valley	CA		92284

Section 2 Terms and Conditions Summary

This Agreement you are signing with TelePacific Communications includes the Terms and Conditions set forth on our website at www.telepacific.com/NEWterms, which are incorporated by this reference into the Agreement. Please refer to our website for the full statement of the Terms and Conditions to which you are agreeing. The summary below is only a reference guide and is not meant to change any of the Terms and Conditions.

1. General – This section defines the Services for which you are contracting, how the prices for those Services are determined, special conditions for rates and fees, such as expedite fees, how the rates, terms and conditions may be changed during the contract Term and any rights you have if those changes occur.

2. Term, Billing and Payment - This section covers when the Agreement becomes effective, when the Term starts and renews, how additional Services, if any, are handled, how billing will occur and what is included, how a deposit may be required, what happens if you delay acceptance of the Services, when payment of Invoices is due, how Invoice disputes are handled, late payment fees, actions that may result from late payment or non-payment and the charge for returned checks.

3. Customer Obligations – This section covers your responsibility for any of our property on your premises, for use of our Service and your message content, for compliance with our Acceptable Use Policy (which may change during the Term), for securing your own network against unauthorized use and access and that you have no right to rely on any oral or written statements of our employees contrary to the Customer Obligations Terms and Conditions. Also included is your responsibility to pay any 3rd party vendor charges and to arrange for disconnection and payment of charges related to the disconnection of any related services with your current carrier(s).

4. Termination – This section states the rights and duties related to termination of Services or the Agreement, the renewal of the Term, the fees charged for cancellation of an order for Services before the commencement of a Term, how a "material breach" of the Agreement is handled, and whether a fee is incurred for termination of Services or the Agreement before the end of a Term and how it is calculated.

Continued on page 2

Section 2 Terms and Conditions Summary, continued

5. Warranty, Disclaimer, Limitation of Liability and Indemnity – This section limits your rights to impose liability for certain damages on us, disclaims certain implied representations and warranties, provides credit allowances under certain conditions for interruptions of Service and outages that you may claim, and defines your obligations, and ours, with regard to indemnity and defense of certain claims.

6. Miscellaneous Provisions – This section controls assignment and transfer of the Agreement and Services under it, the law applicable to the Agreement, an exclusion of liability for damages caused by us over which we have no control, how we resolve disputes under the Agreement, the exclusion of any understanding or other agreements from what is contained in the Agreement and its exhibits, and any changes not signed by both you and us, what happens if any provision of the Agreement is found to be invalid or unenforceable, whether the headings of the sections and paragraphs are part of the Agreement, the effect of non-enforcement of any provision of the Agreement, how we will give notice under the Agreement to each other, and a time limitation for the bringing of a legal action under the Agreement

7. Service Guarantee – This section provides you with an alternative to continuing with our Services under the Agreement under certain conditions.

Section 3 Acceptance

Initial **BY PLACING YOUR INITIALS IN THE SPACE Provided, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND AGREED TO THE FULL TERMS AND CONDITIONS SET FORTH ON THE DATE ENTERED BY YOU BELOW AT www.telepacific.com/NEWterms.**

TelePacific agrees to provide, and the Customer agrees to receive and pay for, those services at locations set forth on the Service Agreement (attached), including any services on subsequent Service Agreements and subsequent changes as long as those changes meet TelePacific's minimum requirements. This agreement shall become a binding contract upon execution by Customer and TelePacific.

Agreed by: Customer Signature	Date
Shirlene Doten	0
Customer Name (Print)	Title
Donn Cary	951-259-8654
Sales Representative Name	Phone
Agreed by: Sales Manager Signature	Date

BTN	Numbers under BTN	Svc Address	Services	Verizon Current Charges including taxes	TelePacific proposed services	TelePacific pricing	New proposed Verizon charges with PRI at Town Hall including taxes	TelePacific pricing
760-369-6584	760-369-6584	57090 29 Palms Highway	5 centranet lines	$ 351.09	5 BLC's	$ 231.25	$ 351.09	$ 231.25
	760-369-6587							
	760-369-6590							
	760-369-1927							
	760-369-7092							
760-369-7211	760-369-7211	57090 29 Palms Highway	22 Flexgrow Centranet lines	$ 672.94	4.5 megs SV with MPLS + 22 analog lines	$ 1,368.59		$ 1,368.59
	760-365-4081							
	760-369-6513							
	760-369-6577		Proposed PRI T1 for Town Hall				$ 1,008.25	
	760-369-6578							
	760-369-6580							
	760-369-6581							
	760-369-7212							
	760-369-1605							
	760-369-2808							
	760-369-4017							
	760-369-3507							
	760-369-0227							
	760-369-0728							
	760-369-0626							
	760-369-9148							
	760-369-7210							
	760-369-7209							
	760-369-7208							
	760-369-7207							
	760-369-6585							
	760-228-1310							
Internet T1		4755 Malin Way	Internet T1	$ 354.00	Internet T1- separate for S2S	$ 354.00	$ 354.00	$ 354.00
760-228-1741	760-228-1741	4755 Malin Way	2 pots lines for Animal shelter	$ 97.46	2 analog business lines	$ 87.32	$ 97.46	$ 87.32
	760-228-1743							
760-AR2-6735		4755 Malin Way to 57090 29 Palms	3 megs bonded to Animal Shelter from Town hall	$ 904.36	3 megs MPLS	$ 730.55	$ 904.36	$ 730.55
760-DH3-5371								

760-QE3-6331		58928 Business Center to 57090 29 Palms	3 megs bonded to Community	$ 904.36	3 megs SV with MPLS + 12 analog lines	$ 915.24	$ 904.36	$ 915.24
760-UH1-7420			Development Center from Town hall					
760-369-4012	760-369-4012	58928 Business Center Dr	2 Pots lines	$ 105.12	2 analog business lines	$ 87.32	$ 105.12	$ 87.32
	760-369-2743							
760-369-6575	760-369-6575	58928 Business Center Dr	12 Flexgrow Centranet lines	$ 577.03	include these on the 3 meg SV	$ -	$ 577.03	$ -
	760-369-0510							
	760-369-7097							
	760-369-6576							
	760-369-0801							
	760-369-1265							
	760-228-0084							
	760-369-6579							
	760-369-6592							
	760-369-5063							
	760-369-5083							
	760-369-4305							
760-369-9149	760-369-9149	58938 Barron Dr	2 Centranet lines	$ 105.22	2 analog business lines	$ 87.32	$ 105.22	$ 87.32
	760-369-6597							
760-228-2625	760-228-2625	56460 Paseo Los NInas	1 pots line	$ 38.78	1 analog business line	$ 43.66	$ 38.78	$ 43.66
760-228-5882	760-228-5882	59100 Santa Barbara Dr	1 pots line - Machris Park	$ 52.76	1 analog business line	$ 43.66	$ 52.76	$ 43.66
760-228-9136	760-228-9136	57201 29 Palms Highway	2 Centranet lines	$ 93.04	2 analog business lines	$ 87.32	$ 93.04	$ 87.32
	760-228-3385							
760-365-5190	760-365-5190	55680 Onaga Tr	1 Pots line - Yucca Valley Park	$ 47.18	1 analog business line	$ 43.66	$ 47.18	$ 43.66
760-369-3703	760-369-3703	7600 Sage Ave	1 Pots lines	$ 57.78	1 analog business line	$ 43.66	$ 57.78	$ 43.66
			1981 minutes of Long Distance	$ 175.26	4000 LD minutes included/mo		$ 175.26	
				$ 4,536.38		$ 4,123.55	$ 4,871.69	$ 4,123.55
					Estimated monthly savings	$ 412.83		$ 748.14
					Estimated annual savings	$ 4,953.96		$ 8,977.68

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager
Alex Qishta, Project Engineer
Date: June 30, 2014
For Council Meeting: July 15, 2014

Subject: Contract Facility/Park Maintenance Services
Desert Arc
Contract Amendment for Contract Services

Prior Council Review: On August 6, 2013, the Town Council authorized the Town Manager to enter into a professional services agreement with Desert Arc, with a maximum annual contract value of $49,140, based upon organizational need and efficiency.

Recommendation: That the Town Council authorizes the Town Manager to execute the Amendment of the professional services agreement with Desert Arc, with a maximum annual contract value of $50,614.00, based upon organizational need and efficiency, and extend the Agreement for two years ending on June 30, 2016.

Executive Summary: The Town contracts for services in a number of different areas. Contract services can provide not only cost savings, but flexibility in program implementation and in the services that the Town provides. Structured levels of facility and park maintenance are common contract municipal services.

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: Desert Arc provides contact services to both public agencies and private organizations. The Town has prior contract experience with Desert Arc (Hi Desert Industries at that time) who performed contract services in both park and facility maintenance during the late 1990s, early 2000s and for FY 2013/2014.

Staff is highly satisfied with vendor performance.

Reviewed By:	Town Manager	Town Attorney	Mgmt Services	Dept Head

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

Alternatives: Do not authorize the Amendment to the existing Agreement.

Fiscal impact: The recommended action would result in a maximum annual contract value of $50,614.00 (3% increases from last year). The estimated annual in-house approach, through part time non-benefited employees, plus supplies, is estimated at approximately $50,000 annually. This does not include supervision time and associated costs from the Facility Maintenance Supervisor, Human Resource costs for recruiting or managing personnel matters, payroll time and expenses, and all other support, management and oversight that is required for Town employees.

Attachments: Desert Arc Amendment to Agreement
Desert Arc Agreement

AMENDMENT TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES ("Amendment") by and between the **TOWN OF YUCCA VALLEY** ("Town") and **DESERT ARC**, a California corporation ("Contractor") is effective as of the 1st day of September, 2014.

RECITALS

A. Town and Contractor entered into that certain Agreement for Contractual Services dated September 1, 2013 ("Agreement") whereby Contractor agreed to provide park Maintenance Services for the Town of Yucca Valley Parks.

B. Town and Contractor now desire to amend the Agreement to include additional compensation for Park Maintenance in an amount not to exceed Fifty Thousand Six Hundred and Fourteen Dollars and Zero Cents ($50,614.00) to the original Contract Amount and revise the Scope of Services. The original Scope of Work and tasks are modified and revised to include the following: Same Services as provided o Original Agreement.

TERMS

1. **Contract Changes**. The Agreement is amended as provided herein.

(a) Section 3.5 of the Agreement ("Term") is hereby amended as follows:

"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 two (2) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D")."

(b) Schedule (Exhibit "D") is hereby amended to replace the date of "August 31, 2014" with the date of "August 31, 2015".

2. **Continuing Effect of Agreement**. Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults**. Town and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Contractor represents and warrants to Town that, as of the date of this Amendment, Town is not in default of any material term of the Agreement and that there have been no events that, with the passing of tie or the giving of notice, or both, would constitute a material default under the Agreement.

Town represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been not events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration**. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **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.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

TOWN:

TOWN OF YUCCA VALLEY

_____
Town Manager

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

_____
Lona Laymon, Town Attorney

CONTRACTOR:

Desert Arc

By:_____
Name: Kellie Kennedy
Title: Director of Business Development

By:_____
Name:
Title:

Address: 73-255 Country Club Dr
Palm Desert, CA 92260

_____

_____

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 DEVELOPER'S BUSINESS ENTITY.

CONTRACT SERVICES AGREEMENT

By and Between

THE TOWN OF YUCCA VALLEY,
A MUNICIPAL CORPORATION

and

DESERT ARC

AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE TOWN OF YUCCA VALLEY, CALIFORNIA
AND
DESERT ARC

THIS AGREEMENT FOR CONTRACT SERVICES (herein" Agreement") is made and entered into this 1 day of September , 2013 by and between the Town of Yucca Valley, a general law municipal corporation ("Town") and Desert Arc, ("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 reinstitution 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 **Forty Nine Thousand One Hundred and Forty Dollars and 0 Cents ($49,140.00)** (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, Article 5, 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:

(Name) Richard Bolce	(Title) Executive Director
(Name)	(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 either (i) bodily injury liability limits of $100,000 per person and $300,000 per occurrence and property damage liability limits of $150,000 per occurrence or (ii) combined single limit liability of $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City 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 City, 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 City. 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 this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Manager or other designee of the City due to unique circumstances.

(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] RM

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 **Zero Dollars and 0 Cents ($0.00)** 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 attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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

9-18-13

ActingTown Manager

ATTEST:

Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Lona Laymon, Town Attorney

CONTRACTOR:

Desert Arc

By: Richard Balocco
Name: Richard Balocco
Title: Executive Director

By:
Name:
Title:

Address: 73-255 County Club
Palm Desert CA.
92260

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 Acknowledgement

State of California }
}ss.
County of Riverside_____ }

On September 10, 2013, before me, Pamela Wittwer Notary Public, personally appeared Richard Balocco, 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

Pamela Wittwer
signature of notary public

PAMELA WITTWER
Commission # 1955028
Notary Public - California
Riverside County
My Comm. Expires Oct 30, 2015

place notary seal above

Description of Attached Document

Title of Type of Document: Contact Services Agreement

Document Date: September 1, 2013

Number of Pages: 30

EXHIBIT "A"
SCOPE OF SERVICES

I. **Contractor will perform the following Services:**

All of Services described in Exhibit "A-1"

II. **As part of the Services, Contractor will prepare and deliver the following tangible work products to the Town:**

See Section III of this Exhibit

III. **In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the Town appraised of the status of performance by delivering the following status reports:**

A. Daily Report for each park and services performed.

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. Ernie Preciado

B. Paul Allen

C. Jonathan Norton

EXHIBIT "A-1"

Desert Arc
OPPORTUNITIES FOR PEOPLE WITH DISABILITIES

Shane Stueckle
Deputy Town Manager
Town of Yucca Valley
57090 Twentynine Palms Highway
Yucca Valley, CA 92284

July 10, 2013

Re: Enclave Proposal for Town of Yucca Valley Parks Maintenance

Dear Mr. Stueckle,

Thank you so much for the opportunity to bid on providing parks maintenance services to the Town of Yucca Valley.

Desert Arc provides services including transportation and supported employment to over 600 developmentally disabled adults in the Coachella Valley.

When assembling our work team for your project. We will use one (1) full-time work team, or "Enclave" to perform this work.

Please see the attached documents including the Bid Proposal and Job Specifications.

Contact us if you need any additions or changes.

Kellie Kennedy
Contracts Procurement & Employment Specialist
Desert Arc
(760) 346-1611 ext. 402

Park Name	Description	Tasks	Frequency	Special Considerations and Other Requirements	Cost per month*
Community Center	Maintenance of outside grounds of Community Center, Town Hall, Senior Center, Library, Museum & 1 outdoor restroom (men's & women's by soccer/softball fields. Include all parking lot & sidewalk areas.	Clean and stock (toilet paper, etc.) outdoor restrooms by the soccer/softball fields, empty trash cans several locations on the site; pick up wind-blown trash, blow off hardscape, i.e., sidewalks around Town Hall, Community Center Building, Senior Center Building. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	June-August restrooms to be cleaned twice daily. Once in AM and second time mid-afternoon near end of shift.	* $4,200/per month to includes all 7 locations. Pending 2 other locations.
Machris Park: Santa Barbara at Carmelita Circle	Maintenance of outside grounds to include: parking lot, 1 outdoor restroom (men's & women's). Including playground & sidewalks down to shade shelter.	Clean and stock (toilet paper, etc.) outdoor restrooms by the parking lot, empty trash cans, pick up wind-blown trash; blow off hardscape, i.e. sidewalks from the parking lot to the restroom building, playground area, and down to the shade shelter. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	No wipe down required of children's play equipment or tables.	*
Essig Park: Joshua Lane and Warren Vista	Maintenance of outside grounds to include: parking lot adjacent to dog park. 1 outdoor restroom (men's & women's). Including playground area, shade shelter & all sidewalk areas.	Clean and stock (toilet paper, etc.) restrooms up to the Dog Park; empty trash cans, pick up wind-blown trash, blow off hardscape; i.e. sidewalks from parking lot to Dog Park, restroom building, shade shelter and playground area. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	No wipe down required of children's play equipment. No maintenance of dog park.	*

Paradise Park: Indio and Barron	Maintenance of outside grounds to include: parking lot, 1 outdoor restroom (men's & women's), including playground & sidewalks down to shade shelter.	Clean and stock restrooms by the parking lot, empty trash cans, pick up wind-blown trash, blow off hardscape, i.e.: sidewalks from parking lot to shade structure and playground equipment. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	No special needs	*
Jacobs Park: Onaga at Hopi	Maintenance of outside grounds to include: parking lot, 1 outdoor restroom (men's & women's), including playground, basketball courts. All sidewalks.	Clean and stock restrooms by the parking lot, empty trash cans, pick up wind-blown trash, blow off hardscape, i.e.: sidewalks from parking lot to basketball court, tennis courts and playground equipment, one restroom building with separate men's and women's. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	Include Basketball courts. No tennis court courts	*
Park & Ride: SR 62 @ Kickapoo	Maintenance of outside grounds to include: hardscape and shade shelter.	Empty trash cans, replace trash can liners, pick up wind-blown trash, and blow off hardscape around shade shelter.	5 days a week- Monday Thru Friday	No Restrooms	*
Remembrance Park: SR 62 @ Yucca Trail west of Acoma	Maintenance of outside grounds to include: hardscape.	Empty trash cans, replace trash can liners, pick up wind-blown trash, and blow off hardscape.	5 days a week- Monday Thru Friday	No Restrooms	*
**Contract may include Brehm 1 (soccer field area) & Brehm 2 (Miracle Field)*	Maintenance of outside grounds to include: hardscape-Restrooms	Empty trash cans, replace trashcan liners, pick up wind-blown trash, and blow off hardscape.	5 days a week- Monday Thru Friday	Restrooms Included	

Scope of Services			
Service	**Includes**	**Notes**	**Monthly Fee**
5 days per week. Maintenance of 6 parks and 1 Community Center to include: Community Center, Town Hall, Senior Center, Museum, Library and parking areas: *Contract may include Brehm 1 (soccer field area) & Brehm 2 (Miracle Field)	Trash pickup. Empty trash cans/insert new liners. Restroom cleaning and restocking. (Except where noted) Cleaning and removing trash from parking lots. Blow off hardscapes.		$4,095 per month includes one (1) full-time mobile Enclave, 5:30AM-11:30PM, 3 Desert Arc Clients 1 Desert Arc Job Coach, transportation, insurance, supervision.
*Per month is 20 days for 5 day frequency.			**$4,095 Per Month**

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Section 7.7, Liquidated Damages, is hereby waived in its entirety.

Section 1.8, Prevailing Wages, is hereby revised to read in its entirety as follows:

"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 16000, *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. Under California Code of Regulations, Title 8, Section 16000, janitorial or custodial services of a routine, or recurring or usual nature and landscape maintenance work by "sheltered workshops" is excluded from the definition of "Maintenance". The services to be performed by Contractor are janitorial or custodial services of routine, or recurring or usual nature, or landscape maintenance work by a "sheltered workshop". Contractor has certified to the Town that it has a valid and current "Sheltered Workshop" License, attached hereto as Exhibit B-1. Accordingly, it is believed by the Parties that Contractor is not required to pay prevailing wages in connection with the janitorial, custodial, or landscape maintenance service provided to the Town under this Agreement. However, to the extent that it is determined that Contractor was required to pay prevailing wage and has not paid prevailing wages for any period of time during the term of this Agreement, Contractor shall defend and hold the Town harmless from and against any and all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Contractor failed to pay prevailing wages in connection with the services provided under this Agreement. Additionally, during the term of this Agreement, Contractor agrees to keep its Sheltered Workshop License current and to provide the Town a copy of a current Sheltered Workshop License."

EXHIBIT "B-1"

U.S. Department of Labor
Wage and Hour Division
National Certification Program - 514
230 South Dearborn Street, Room 514
Chicago, Illinois 60604

CERTIFICATE AUTHORIZING SPECIAL MINIMUM WAGE RATES UNDER SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT

Certificate Number: 09-03725-S-066

FOUNDATION FOR THE RETARDED OF THE DESERT
73-255 COUNTRY CLUB DRIVE
PALM DESERT, CA 92260

For Branch Location:

YUCCA VALLEY WORK PROGRAMS
6540 LA CONTENTA, SUITE 500
Yucca Valley, CA 92284

Type of Certificate:

Community Rehabilitation Program
(Work Center)

This special certificate authorizes the employment of workers with disabilities in accordance with the requirements of 29 CFR Part 525, effective 04/01/2012.

This certificate will remain in effect until 03/31/2014 provided that all applicable provisions of the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, the McNamara-O'Hara Service Contract Act, and the Contract Work Hours and Safety Standards Act and the regulations issued pursuant thereto are fully complied with. If an application for renewal has been properly and timely filed with the Wage and Hour Division prior to 03/31/2014, this special minimum wage certificate will remain in effect until the application for renewal has been granted or denied.

The enclosed certificate does not constitute a statement of compliance by the Department of Labor nor does it convey a good faith defense to the employer should violations of the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, the McNamara-O'Hara Service Contract Act, or the Contract Work Hours and Safety Standards Act occur.

Please contact the following Wage Specialist should you have any questions regarding the issuance of this certificate:

Name of wage specialist: Nicole Howard Phone: 312-596-7200

See the reverse of this certificate and the applicable regulations for further information.

NOTICE TO WORKERS WITH DISABILITIES PAID AT SPECIAL MINIMUM WAGES

The Fair Labor Standards Act (FLSA) provides that workers with disabilities whose disabilities impair their ability to perform the type of work being done in the establishment may be employed at wage rates below the minimum otherwise required by the FLSA. Such employment is permitted only under certificates issued by the Department of Labor and must reflect the productivity of the individual worker as related to the productivity of a worker who does not have disabilities for the work being performed, and the wages being paid to experienced workers performing the same or similar work in the vicinity. Such wages are referred to as "commensurate wage rates." This establishment has a certificate authorizing the payment of commensurate wages to workers with disabilities. Workers who do not have disabilities for the work being performed, including workers who may otherwise have disabilities, must receive at least the statutory minimum wage.

For purposes of payment of commensurate wages under a certificate, a worker with a disability is defined as an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may, but will not necessarily, affect productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, do not constitute disabilities for purposes of paying commensurate wages: educational disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.

Each worker with a disability, and where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed.

Complaints or questions regarding the terms and conditions of employment under a certificate may be directed to the Wage and Hour Division, U.S. Department of Labor. Action will be taken to address an individual's concerns, including where appropriate, a formal investigation of the employer. Workers with disabilities paid at special minimum wages may also petition the Administrator of the Wage and Hour Division of the U.S. Department of Labor for a review of their wage rates by an Administrative Law Judge. No particular form of petition is required, except that it must be signed by the worker with a disability or his or her parent or guardian and should contain the name and address of the employer. Petitions should be mailed to: Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C., 20210.

Wage and Hour Representative:
Sharlyn Simon

Title:
National Certification Program Manager

Date Certificate Printed
05/08/2012

Cert. ID: 172273

Form WH-226
Rev. January 2002

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LICENSING & REGISTRATION UNIT

SHELTERED WORKSHOP LICENSE

Pursuant to Section 1191.5 of the California Labor Code and Section 6 of Order Number 1-01 of the Industrial Welfare Commission, a Sheltered Workshop License is issue to:

Desert Arc
73255 Country Club Drive
Palm Desert, CA 92260

LICENSE NUMBER SW 89924
EFFECTIVE DATE October 19, 2012
EXPIRATION DATE October 18, 2013

This license is issued for the following programs at wage rates not less than the special minimums indicated, and on the terms and conditions following:

PROGRAM	DURATION	OTHER
Regular Work	90 Day Training	Wage commensurate with rates paid non-handicapped workers for similar work in the area- no established minimum wage.
Work Activities Center	1 week up to on going	Wage commensurate with rates paid non-handicapped workers for similar work in the area- no established minimum wage.
Evaluation	6 week period	Wage commensurate with rates paid non-handicapped workers for similar work in the area- no established minimum wage.
Training	11 programs per week	Wage commensurate with rates paid non-handicapped workers for similar work in the area- no established minimum wage.

TERMS AND CONDITIONS

1. In addition to the information required by Section 7 of the Industrial Welfare Commission Order, records shall be kept on file, covering the period of this license, showing:

   (a) The nature of each disabled workers' disability, including, where appropriate, medical reports and examinations;

   (b) Each workers' piece-work production, if applicable;

   (c) Records of time studies made to establish piece-rates, if applicable.

2. A roster shall be kept, showing name of client, date of hire, program of enrollment, and beginning rate of pay. The roster shall cover the period of this license.

3. Piece rates shall not be less than the piece rates paid to non-disabled employees engaged in the same work in the vicinity in regular commercial industry maintaining approved labor standards.

4. A copy of this license shall be posted at each location where clients will be employed.

5. No provisions of this license shall excuse non-compliance with any other Federal or State law establishing higher standards.

6. All other provisions of the Industrial Welfare Commission Orders shall be observed.

10/24/2012

STATE LABOR COMMISSIONER

L&R_118

POST IN A CONSPICUOUS PLACE

EXHIBIT "C"

COMPENSATION

I. **Contractor shall perform the following tasks:**

Performance of all Services described in Exhibit "A" above shall be compensated at the monthly rate of $4,095.00 per month for the Term of the agreement.

II. **A retention of Zero percent (0%) 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.**

N/A.

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 $49,140.00, as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. **Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until August 31, 2014. The Town may, in its sole and absolute discretion, extend the Term for additional one year periods. Contractor shall perform all services timely in accordance with the following schedule:**

As described in the "Frequency" column of Exhibit "A-1".

II. **Contractor shall deliver the following tangible work products to the Town by the following dates.**

N/A.

III. **The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

Park Name	Description	Tasks	Frequency	Special Considerations and Other Requirements	Cost per month*
Community Center	Maintenance of outside grounds of Community Center, Town Hall, Senior Center, Library, Museum & 1 outdoor restroom (men's & women's by soccer/softball fields. Include all parking lot & sidewalk areas.	Clean and stock (toilet paper, etc.) outdoor restrooms by the soccer/softball fields, empty trash cans several locations on the site; pick up wind-blown trash, blow off hardscape, i.e.; sidewalks around Town Hall, Community Center Building, Senior Center Building. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	**June-August restrooms to be cleaned twice daily. Once in AM and second time mid-afternoon near end of shift.**	* $4,095/per month to includes all 7 locations. Pending 2 other locations.
Machris Park: Santa Barbara at Carmelita Circle	Maintenance of outside grounds to include: parking lot, 1 outdoor restroom (men's & women's). Including playground & sidewalks down to shade shelter.	Clean and stock (toilet paper, etc.) outdoor restrooms by the parking lot, empty trash cans, pick up wind-blown trash; blow off hardscape, i.e. sidewalks from the parking lot to the restroom building, playground area, and down to the shade shelter. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	No wipe down required of children's play equipment or tables.	*
Essig Park: Joshua Lane and Warren Vista	Maintenance of outside grounds to include: parking lot adjacent to dog park. 1 outdoor restroom (men's & women's).Including playground area, shade shelter & all sidewalk areas.	Clean and stock (toilet paper, etc.) restrooms up to the Dog Park; empty trash cans, pick up wind-blown trash, blow off hardscape; i.e. sidewalks from parking lot to Dog Park, restroom building, shade shelter and playground area. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	No wipe down required of children's play equipment. **No maintenance of dog park**.	*

Paradise Park: Indio and Barron	Maintenance of outside grounds to include: parking lot, 1 outdoor restroom (men's & women's). Including playground & sidewalks down to shade shelter.	Clean and stock restrooms by the parking lot; empty trash cans, pick up wind-blown trash, blow off hardscape, i.e.: sidewalks from parking lot to shade structure and playground equipment. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	No special needs	*
Jacobs Park: Onaga at Hopi	Maintenance of outside grounds to include: parking lot, 1 outdoor restroom (men's & women's). Including playground, basketball courts. All sidewalks.	Clean and stock restrooms by the parking lot; empty trash cans, pick up wind-blown trash, blow off hardscape, i.e.: sidewalks from parking lot to basketball court, tennis courts and playground equipment; one restroom building with separate men's and women's. Restock trash cans with new trash can liners. One restroom building with separate men's and women's.	5 days a week- Monday Thru Friday	Include Basketball courts. No tennis court courts	*
Park & Ride: SR 62 @ Kickapoo	Maintenance of outside grounds to include: hardscape and shade shelter.	Empty trash cans, replace trash can liners, pick up wind-blown trash, and blow off hardscape around shade shelter.	5 days a week- Monday Thru Friday	**No Restrooms**	*
Remembrance Park: SR 62 @ Yucca Trail west of Acoma	Maintenance of outside grounds to include: hardscape.	Empty trash cans, replace trash can liners, pick up wind-blown trash, and blow off hardscape.	5 days a week- Monday Thru Friday	**No Restrooms**	*
Contract may include Brehm 1 (soccer field area) & Brehm 2 (Miracle Field)	Maintenance of outside grounds to include: hardscape-Restrooms	Empty trash cans, replace trashcan liners, pick up wind-blown trash, and blow off hardscape.	5 days a week- Monday Thru Friday	**Restrooms Included**	

Scope of Services			
Service	**Includes**	**Notes**	**Monthly Fee**
5 days per week. Maintenance of 6 parks and 1 Community Center to include: Community Center Town Hall, Senior Center, Museum, Library and parking areas. *Contract may include Brehm 1 (soccer field area) & Brehm 2 (Miracle Field)	Trash pickup. Empty trash cans/insert new liners. Restroom cleaning and restocking. (Except where noted) Cleaning and removing trash from parking lots Blow off hardscapes.		$4,095 per month includes one (1) full-time mobile Enclave, 5:30AM-11:30PM. 3 Desert Arc Clients 1 Desert Arc Job Coach, transportation, insurance, supervision.
*Per month is 20 days for 5 day frequency.			**$4,095 Per Month**

DCA-01-03 meets the exemption criteria which states "that if an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA".

B. Adopt the Ordinance, and repeal Chapter 4, Division of Land Procedures, from Title 8 of the San Bernardino County Development Code as adopted by the Town of Yucca Valley

Mayor Pro Tem Lombardo seconded. Motion carried 5-0 on a voice vote.

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

DEPARTMENT REPORTS

10. Contract Facility/Park Maintenance Services- Desert ARC, Authorization for Contract Services

Deputy Town Manager Stueckle presented the staff report, explaining an alternative manner to conduct necessary maintenance services. Increased maintenance responsibility is necessary since the inclusion of additional parks in the Town's inventory and the recent move of a full time staff member from the Parks Division to the Streets Division.

Mayor Abel opened public comment. With no one wishing to speak, Mayor Abel closed public comment.

Council Member Leone received confirmation that Desert ARC is a local company.

Mayor Pro Tem Lombardo commented on the great example of working together to provide local employment.

Council Member Huntington spoke favorably of Desert ARC and the services they provide.

Council Member Rowe moved to authorize the Town Manager to enter into a professional services agreement with Desert ARC, with a maximum annual contract value of $49,140, based upon organizational need and efficiency, and to return to the Town Council at Mid-Year Budget Review for program evaluation. Mayor Pro Tem Lombardo seconded. Motion carried 5-0 on a voice vote.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager
Date: August 1, 2013
For Council Meeting: August 6, 2013

Subject: Contract Facility/Park Maintenance Services
Desert Arc
Authorization for Contract Services

Prior Council Review: There has been no prior review of this matter.

Recommendation: That the Town Council authorizes the Town Manager to enter into a professional services agreement with Desert Arc, with a maximum annual contract value of $49,140, based upon organizational need and efficiency, and to return to the Town Council at Mid-Year Budget Review for program evaluation.

Executive Summary: The Town contracts for services in a number of different areas. Contract services can provide not only cost savings, but flexibility in program implementation and in the services that the Town provides. Structured levels of facility and park maintenance are common contract municipal services.

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: Adoption of the FY 2013/2014 Budget included personnel changes in Park and Facility Maintenance. With the existing vacancy in Street Maintenance, one full-time benefited Park Maintenance position was eliminated, and that individual was reassigned to Street Maintenance. Facility Maintenance is assuming a number of the maintenance functions previously allocated to Parks, and funding for three part-time, non-benefited Facility Maintenance positions were included in the FY 2013/2014 adopted budget. Human resources conducted open recruitments to fill the positions. After evaluating the applicants for the positions, Town staff was not confident that these positions could be adequately filled to maintain quality service for the community.

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

As the overall park maintenance program is occurring incrementally during the current fiscal year, staff has continued to evaluate alternative means of meeting maintenance needs. Town staff examined options for contracting out the park maintenance services.

Desert Arc provides contact services to both public agencies and private organizations. The Town has prior contract experience with Desert Arc (Hi Desert Industries at that time) who performed contract services in both park and facility maintenance during the late 1990s and early 2000s. Town staff and representatives from Desert Arc field reviewed all sites, reviewed alternative scopes for daily maintenance needs, and developed the attached maintenance specifications.

Town staff requested a bid for services from Desert Arc. After comparison of the costs to staff internally vs the costs to contract, staff is recommending that the Town contract with Desert Arc. Since the contract amount exceeds the authority of the Town Manager, under provisions of the Town's Municipal Code (3.12.100(d)), staff is recommending that Town Council authorize the execution of the contract.

As the park maintenance program continues to move forward, staff will monitor overall program progress and make any necessary program modification recommendations to the Town Council at Mid-Year Budget Review.

Alternatives: Do not authorize the Town Manager to enter into the Agreement.

Fiscal impact: The recommended action would result in a maximum annual contract value of $49,140. The estimated annual in-house approach, through part time non-benefited employees, plus supplies, is estimated at approximately $47,000 annually. This does not include supervision time and associated costs from the Facility Maintenance Supervisor, Human Resource costs for recruiting or managing personnel matters, payroll time and expenses, and all other support, management and oversight that is required for Town employees. Therefore this approach will result in additional savings beyond those identified in the adopted FY 2013/2014 Budget.

Attachments: Desert Arc Scope

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Curtis Yakimow, Administrative Services Director
Date: July 7, 2014
Council Meeting: July 15, 2014

Subject: Warrant Register July 15, 2014

Recommendation:

Ratify the Payroll Registers total of $ 284,440.45 for checks dated June 6, 2014 and June 20, 2014 and Warrant Registers total of $ 476,518.36 for checks dated June 12, 2014 and June 26, 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. 48 dated June 06, 2014 total of $122,576.95
Payroll Register No. 50 dated June 20, 2014 total of $ 161,863.50
Warrant Register No. 53 dated June 12, 2014 total of $ 410,593.87
Warrant Register No. 55 dated June 26, 2014 total of $ 65,924.49

Reviewed By:	Town Manager	Town Attorney	Admin. Services	Finance

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

TOWN OF YUCCA VALLEY

PAYROLL REGISTER # 48
CHECK DATE - June 06, 2014

Fund Distribution Breakdown

Fund Distribution

General Fund	**$111,798.83**
Gas Tax Fund	**10,778.12**
Successor Agency	**0.00** **
Grand Total Payroll	**$122,576.95**

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

Prepared by P/R & Financial Specialist: _____ Reviewed by H/R & Risk Mgr.: _____ 6/10/14

Town of Yucca Valley

Payroll Net Pay & Net Liability Breakdown

Pay Period 48 - Paid 06/06/2014

(May 17, 2014 - May 30, 2014)

Checks: 4882 - 4895

	Employee	Employer	Total
Net Employee Pay			
Payroll Checks	$3,866.88		$3,866.88
Direct Deposit	60,663.67	-	60,663.67
Sub-total	64,530.55		64,530.55
Employee Tax Withholding			
Federal	9,940.90		9,940.90
Medicare	1,193.00	1,193.06	2,386.06
SDI - EE	-	-	-
State	2,968.44		2,968.44
Sub-total	14,102.34	1,193.06	15,295.40
Employee Benefit & Other Withholding			
Misc. Payroll Adjustment Credit's	-	-	-
Deferred Compensation	2,535.87	978.36	3,514.23
PERS Survivor Benefit	36.00		36.00
Health Café Plan	1,343.70	10,972.06	12,315.76
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%	903.06		903.06
PERS EE - Contribution 8%	4,574.94		4,574.94
PERS Retirement - Employer 6.25 %	-	253.91	253.91
PERS Retirement - Employer 7.846 %	-	1,038.39	1,038.39
PERS Retirement - Employer 18.586 %	-	11,157.05	11,157.05
Wage Garnishment - Employee	11.54		11.54
Life & Disability Insurance		963.08	963.08
Other Post Employee Benefit's		2,265.02	2,265.02
Unemployment Insurance		1,456.17	1,456.17
Workers' Compensation		3,328.22	3,328.22
Sub-total	10,338.74	32,412.26	42,751.00
Gross Payroll	**$88,971.63**	**$33,605.32**	**$122,576.95**

Prepared by P/R & Financial Specialist: _____ Reviewed by H/R & Risk Mgr.: _____

TOWN OF YUCCA VALLEY

PAYROLL REGISTER # 50
CHECK DATE - June 20, 2014

Fund Distribution Breakdown

Fund Distribution

General Fund	**$150,752.99**
Gas Tax Fund	**11,110.51**
Successor Agency	**0.00** **
Grand Total Payroll	**$161,863.50**

****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 50 - Paid 06/20/2014

(May 31, 2014 - June 13, 2014)

Checks: 4896 - 49xx

	Employee	Employer	Total
Net Employee Pay			
Payroll Checks	$4,707.99		$4,707.99
Direct Deposit	80,605.38	-	80,605.38
Sub-total	85,313.37		85,313.37
Employee Tax Withholding			
Federal	16,891.01		16,891.01
Medicare	1,685.95	1,685.95	3,371.90
SDI - EE	-	-	-
State	5,703.76		5,703.76
Sub-total	24,280.72	1,685.95	25,966.67
Employee Benefit & Other Withholding			
Misc. Payroll Adjustment Credit's	-	-	-
Deferred Compensation	3,556.17	2,914.19	6,470.36
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 %	236.45		236.45
PERS EE - Contribution 7%	939.94		939.94
PERS EE - Contribution 8%	5,130.02		5,130.02
PERS Retirement - Employer 6.25 %	-	236.45	236.45
PERS Retirement - Employer 7.846 %	-	1,080.81	1,080.81
PERS Retirement - Employer 18.586 %	-	12,510.75	12,510.75
Wage Garnishment - Employee	76.54		76.54
Life & Disability Insurance		905.64	905.64
Other Post Employee Benefit's		3,195.79	3,195.79
Unemployment Insurance		2,022.29	2,022.29
Workers' Compensation		4,622.40	4,622.40
Sub-total	12,008.54	38,574.92	50,583.46
Gross Payroll	**$121,602.63**	**$40,260.87**	**$161,863.50**

Prepared by P/R & Financial Specialist: _____ Reviewed by H/R & Risk Mgr.: _____

WARRANT REGISTER # 53
CHECK DATE - JUNE 12, 2014

FUND DISTRIBUTION BREAKDOWN

Checks # 44850 to # 44932 are valid

GENERAL FUND # 001	$378,211.49
CENTRAL SUPPLIES FUND # 100	$2,631.95
CUP DEPOSITS FUND # 200	$8,900.45
COPS LLESA FUND # 511	$29.15
STREET MAINTENANCE FUND # 515	$15,575.53
MEASURE I 2010-2040 FUND # 524	$4,117.52
SAFE ROUTES TO SCHOOLS FUND # 529	$333.90
CMAQ FUND # 542	$793.88
GRAND TOTAL	**$410,593.87**

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
June 12,2014

Fund	Check #	Vendor	Description	Amount
001	GENERAL FUND			
	44850	Aleshire & Wynder, LLC	04/14 Professional Services	$ 19,568.33
	44851	Ruth Alkire	Contract Instructor	75.60
	44852	Alsco/American Linen, Inc.	Facilities Operating Supplies	151.79
	44853	Animal Action League	Spay & Neuter Services	3,325.00
	44854	Arrowhead Mountain Water	Office Supplies	208.65
	44855	AT & T Mobility	Cell Phone Supplies	59.99
	44856	Bank of New York Mellon	05/01-06/01/14 SA Escrow Fee	500.00
	44857	Cheyenne Bonnell	Contract Instructor	123.20
	44858	Carol Boyer	Contract Instructor	71.40
	44859	Debra Breidenbach-Sterling	CSTI OES Training Expense	224.50
	44860	Builders Supply-Yucca Valley	Maintenance Supplies	220.66
	44861	CDW Government, Inc.	HP Design Jet T2500 Printer	9,996.40
	44862	Charles Abbott & Assoc, Inc.	Plan Check Service	9,277.80
	44863	Sharon Cisneros	Emergency Mgmt.Training Expense	855.64
	44864	Corelogics Info. Solutions	Property Search Information	165.00
	44865	Robert Cox	Contract Instructor	51.80
	44867	Desert Images Office Equip.	Toners	284.09
	44868	Dept of Justice	Livescan Services	309.00
	44869	Exhibit Envoy	Membership Dues	100.00
	44870	Farmer Bros. Co.	Office Supplies	430.70
	44872	Catherine Fletcher	Contract Instructor	39.20
	44875	Fulton Distributing Co.	Facilities Maintenance	2,030.42
	44876	G & K Propane	Vehicle Fuel	51.68
	44877	Graphic Penguin	Web Site Maintenance	430.00
	44878	Joy Groves	Contract Instructor	213.50
	44879	Totalfunds by Hasler	Postage	435.81
	44880	Hi-Desert Glass	Facilities Maintenance	150.21
	44881	Hi-Desert Water	Water Service	1,124.99
	44882	Hi-Desert Publishing	Public Hearing Advertising	949.25
	44883	Susan Jordan	Contract Instructor	147.00
	44884	Heather Kaczmarczk	Contract Instructor	784.00
	44886	Pat Lumbattis	Contract Instructor	65.80
	44887	David Luse	Contract Instructor	35.00
	44889	NRO Engineering	Engineering Services	4,750.00
	44890	Sierra Oakes	Contract Instructor	39.20
	44891	Oasis Office Supply, Inc.	Office Supplies	395.43
	44892	Carl Otteson	Professional Services	45.00
	44893	Pacific Telemanagement Svs.	07/14 Public Phone Service	82.64
	44894	PlasticPlace	Facilities Maintenance	323.90
	44895	Plaza Art & Frame	Museum Exhibit Expense	54.38
	44896	Pool & Spa Center	YVHS Pool Expense	89.42

Town of Yucca Valley
Warrant Register
June 12,2014

Fund	Check #	Vendor	Description	Amount
	44897	Pro Security	Annual Security Monitoring Svs.	65.00
	44898	Pro Video	Town Council Taping Svs.	300.00
	44900	Maureen Randall	Emergency Mgmt.Training Expense	383.00
	44901	Jessica Rice	Training & Mileage Expense	396.42
	44902	Lynne Richardson	Contract Instructor	276.50
	44903	Linda Sande	Contract Instructor	86.10
	44904	SBCO-Clerk/Supervisors	Notice of Exemption Fee	50.00
	44905	SBCO-Clerk/Supervisors	Notice of Exemption Fee	50.00
	44906	SBCO Sheriff's Dept	06/14 Professional Services	293,590.00
	44907	SCE	Electric Service	4,190.69
	44908	Beverly Schmuckle	Contract Instructor	67.20
	44910	Southwest Networks, Inc.	Technology Support	3,913.99
	44911	Sprint	Cell Phone Service	4.12
	44912	Star2Star Communications, LLC	05/21-06/20/14 Shelter Phone Svs.	389.22
	44913	Steven Enterprises	Plotter Paper	86.03
	44914	The Sun Runner	Museum Advertising	100.00
	44915	T.T.I. Inspections	Vehicle/Equipment Maintenance	1,164.38
	44916	That Shirt Place	Youth Commission Event	390.88
	44917	The Planning Center	General Plan Update Services	5,066.18
	44918	Selah Thuresson	Uniform Expense	117.72
	44919	Time Warner Cable	06/06-07/05/14 Internet/Cable	467.78
	44920	Tops n Barricades, Inc.	Grubstake Days Traffic Control	1,325.00
	44921	Tractor Supply	Facilities & Parks Expense	290.65
	44922	Trophy Express	Engraving Service	29.16
	44923	Unisource Worldwide, Inc.	Facilities Maintenance Supplies	1,962.49
	44924	Vagabond Welding Supply	Facilities Maintenance	79.38
	44925	Yucca Valley Animal Hospital	Veterinary Services	170.00
	44928	US Bank Voyager Fleet Systems	Natural Gas Vehicle Fuel	119.38
	44929	Walmart Community	Operating Supplies	70.86
	44930	Guy Wulf	Sports Referee	400.00
	44931	Yucca Valley Quick Lube, LLC	Fleet Vehicle Maintenance	39.21
	44932	Yucca Valley Auto Parts, Inc.	Vehicle Expense	32.38
	EFT	First Bank Card	Operating Supplies/Memberships	4,301.49
Total 001	**GENERAL FUND**			**$ 378,211.49**
	100	INTERNAL SERVICE FUND		
	44927	Valley Independent	Business Card Masters	$ 2,631.95
Total 100	**INTERNAL SERVICE FUND**			**$ 2,631.95**

Town of Yucca Valley
Warrant Register
June 12,2014

Fund	Check #	Vendor	Description		Amount
200 DEPOSITS FUND					
	44871	FedEx	Delivery Service	$	159.63
	44888	Lee Martineau	Santana's Deposit Account Close		336.00
	44889	NRO Engineering	Engineering Services		8,385.00
	44891	Oasis Office Supply, Inc.	Copying Service		19.82
Total 200	**DEPOSITS FUND**			**$**	**8,900.45**
511 COPS-LLESA FUND					
	44926	Verizon Wireless	04/23-05/22/14 SO Phone Svs.	$	29.15
Total 511	**COPS-LLESA FUND**			**$**	**29.15**
515 GAS TAX FUND					
	44852	Alsco/American Linen, Inc.	Streets Uniform Service	$	37.80
	44860	Builders Supply-Yucca Valley	Maintenance Supplies		18.35
	44866	Crafco, Inc.	Asphalt Supplies		4,567.32
	44873	Flint Trading, Inc.	Thermoplastic Road Material		4,518.70
	44874	Fred's Tires	Vehicle Maintenance		563.79
	44899	Quality Street Services, Inc.	Street Sweeping Service		4,180.00
	44907	SCE	Electric Service		662.13
	44915	T.T.I. Inspections	Vehicle/Equipment Maintenance		1,027.44
Total 515	**GAS TAX FUND**			**$**	**15,575.53**
524 MEASURE I -2010-2040 FUND					
	44907	SCE	Electric Service	$	3,867.52
	44909	Siemens Industry, Inc.	Signal Maintenance Project		250.00
Total 524	**MEASURE I -2010-2040 FUND**			**$**	**4,117.52**
529 SR2S SAFE ROUTES TO SCHOOL FUND					
	44882	Hi-Desert Publishing	Advertising	$	333.90
Total 529	**SR2S SAFE ROUTES TO SCHOOL FUND**			**$**	**333.90**
542 CMAQ FUND					
	44882	Hi-Desert Publishing	Advertising	$	441.00
	44885	Legacy Office Products	Copying Service		352.88
Total 542	**CMAQ FUND**			**$**	**793.88**
***	**Report Total**			**$**	**410,593.87**

WARRANT REGISTER # 55
CHECK DATE - JUNE 26, 2014

FUND DISTRIBUTION BREAKDOWN

Checks # 44933to # 45001 are valid

GENERAL FUND # 001	$55,942.96
INTERNAL SERVICES FUND # 100	$194.06
DEPOSITS FUND # 200	$98.73
COPS LLESA FUND # 511	$134.73
STREET MAINTENANCE FUND # 515	$7,601.90
MEASURE I 2010-2040 FUND # 520	$1,040.81
PUBLIC LANDS FEDERAL GRANT FUND # 527	$250.00
SR STATE SAFE ROUTES TO SCHOOLS FUND # 529	$635.29
CMAQ FUND # 542	$26.01
GRAND TOTAL	**$65,924.49**

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
June 26, 2014

Fund	Check #	Vendor	Description	Amount
001 GENERAL FUND				
	44934	Action Pumping, Inc.	Annual Septic Maintenance	$ 1,070.00
	44935	Alsco/American Linen, Inc.	Facilities Operating Supplies	148.70
	44936	Janet Anderson	07/14 Medical Insurance	1,317.60
	44937	Arrowhead Mountain Water	Office Supplies	137.88
	44938	AT & T Mobility	Cell Phone Service	437.07
	44939	Avalon Urgent Care	Medical Screening Services	590.00
	44940	Big 5 Corp.	Recreation Program Expense	26.95
	44941	Builders Supply-Yucca Valley	Maintenance Supplies	87.42
	44942	CA State Controller's Office	Controller's Offset Program	26.77
	44943	CACEO	Code Compliance Officer Training	25.00
	44946	Companion Animal Clinic	Veterinary Services & Supplies	83.50
	44947	Corelogics Information Solutions	Online Property Search Svs.	165.00
	44949	Desert Arc	05/14 Park Maintenance Svs.	4,095.00
	44950	Department of Motor Vehicles	Vehicle Registration	19.00
	44951	Department of Motor Vehicles	Vehicle Registration	19.00
	44952	Department of Motor Vehicles	Vehicle Registration	19.00
	44953	Department of Motor Vehicles	Vehicle Registration	19.00
	44954	Department of Motor Vehicles	Vehicle Registration	19.00
	44955	Department of Motor Vehicles	Vehicle Registration	19.00
	44956	Department of Motor Vehicles	Vehicle Registration	19.00
	44957	Department of Motor Vehicles	Vehicle Registration	19.00
	44958	Department of Motor Vehicles	Vehicle Registration	19.00
	44959	Department of Motor Vehicles	Vehicle Registration	19.00
	44960	Department of Motor Vehicles	Vehicle Registration	19.00
	44961	Department of Motor Vehicles	Vehicle Registration	19.00
	44962	Department of Motor Vehicles	Vehicle Registration	19.00
	44963	Department of Motor Vehicles	Vehicle Registration	19.00
	44964	Department of Motor Vehicles	Vehicle Registration	19.00
	44965	Department of Motor Vehicles	Vehicle Registration	19.00
	44966	FedEx	Delivery Service	391.73
	44967	Fulton Distributing Co.	Facilities Maintenance	33.05
	44968	Golden State Sports Photography	Basketball Photos & Plaques	1,213.35
	44969	Harrison Air Conditioning	Facilities Maintenance	350.00
	44970	Hi-Desert Publishing	Activity Guide & Employment Ad	3,918.70
	44971	Intervet, Inc.	Shelter Adoption Supplies	2,924.10
	44972	Lisa Kessler	Recreation Program Refund	400.00
	44973	Bob Leone	Mileage Expense	91.06
	44974	Morongo Unified School District	Fleet Vehicle Fuel	3,455.65
	44975	Navitas Lease Corp.	Shelter Phones Lease	527.19
	44976	NRO Engineering	Engineering Services	375.00
	44977	Oasis Office Supply, Inc.	Office Supplies	1,524.32

Town of Yucca Valley
Warrant Register
June 26, 2014

Fund	Check #	Vendor	Description	Amount
	44978	Carl Otteson	Backflow Testing Svs.	430.00
	44979	Public Agency Retirement Svs.	04/14 Trust Administrator Svs.	300.00
	44980	Ambra Pasos	Recreation Program Refund	400.00
	44981	Petty Cash	Miscellaneous Supplies	342.86
	44982	Rogers, Anderson, Malody,Scott	Professional Services	11,500.00
	44983	Ron's Automotive	Vehicle Maintenance	398.75
	44984	SBCO - Information Services	05/14 Radio Access	2,072.11
	44985	SCE	Electric Service	6,890.98
	44986	Simplot Partners, Inc.	Parks/Streets Maintenance	73.11
	44987	So. Cal. Gas Co.	05/14 Natural Gas Service	533.71
	44988	T.T.I. Inspections	Vehicle Inspection Svs.	150.00
	44989	Selah Thuresson	Training Expense	432.78
	44992	Trophy Express	Engraving Service	34.02
	44993	Verizon	Phone & Internet Service	4,310.22
	44994	Verizon Business	06/14 Shelter Internet Svs.	376.75
	44995	Walmart Community	Recreation & Shelter Supplies	283.61
	44996	Garrett Ward	Parks Maintenance Supplies	90.00
	44998	Guy Wulf	Sports Referee	300.00
	44999	Yucca Valley Quick Lube, LLC	Fleet Vehicle Maintenance	78.42
	45000	YV Chamber of Commerce	Joint Marketing Agreement	747.05
	45001	Yucca Valley Auto Parts, Inc.	Vehicle Maintenance	651.43
	EFT	The Home Depot	Maintenance Supplies	704.41
	EFT	First Bankcard	Meetings & Supplies	1,123.71
Total 001	**GENERAL FUND**			**$ 55,942.96**
100	INTERNAL SERVICE FUND			
	44977	Oasis Office Supply, Inc.	Office Supplies	$ 194.06
Total 100	**INTERNAL SERVICE FUND**			**$ 194.06**
200	DEPOSITS			
	44966	FedEx	Delivery Service	$ 98.73
Total 200	**DEPOSITS FUND**			**$ 98.73**
511	COPS-LLESA			
	44990	Time Warner Cable	05/17-06/16/14 Cable Service	$ 134.73
Total 511	**COPS-LLESA FUND**			**$ 134.73**

Town of Yucca Valley
Warrant Register
June 26, 2014

Fund	Check #	Vendor	Description	Amount
515 GAS TAX FUND				
	44933	A Cone Zone, Inc.	Street Name Signage	$ 1,380.46
	44935	Alsco/American Linen, Inc.	Streets Uniform Service	37.80
	44945	Brian Clement	Safety Equipment	151.19
	44948	Crafco, Inc.	Asphalt Supplies	3,627.72
	44986	Simplot Partners, Inc.	Parks/Streets Maintenance	820.80
	44991	Tops n Barricades, Inc.	Street Signage Supplies	1,583.93
Total 515	**GAS TAX FUND**			**$ 7,601.90**
520 MEASURE I-2010-2040 FUND			40-REGIONAL	
	44997	Albert A. Webb Assoc.	Dumosa Signal Design Project	$ 1,040.81
Total 520	**MEASURE I-2010-2040 FUND**			**$ 1,040.81**
527 PUBLIC LANDS FEDERAL GRANT FUND				
	44944	Randy Chow & Sarah P. Chow	Right of Way Acquisition	$ 250.00
Total 527	**PUBLIC LANDS FEDERAL GRANT FUND**			**$ 250.00**
529 SR2S STATE SAFE ROUTES TO SCHOOLS FUND				
	44966	FedEx	Delivery Service	$ 635.29
Total 529	**SR2S STATE SAFE ROUTES TO SCHOOLS FUND**			**$ 635.29**
542 CMAQ (SA)				
	44966	FedEx	Delivery Service	$ 26.01
Total 542	**CMAQ FUND**			**$ 26.01**
***	**Report Total**			**$ 65,924.49**

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager
Date: July 9, 2014
For Council Meeting: July 15, 2014

Subject: Brehm Youth Sports Park
Acquisition Agreement

Prior Council Review: The Town Council previously reviewed the Brehm Park transition/acquisition in April 2013 and with the adoption of the FY '13/14 Budget. The Council appointed the Ad Hoc Committee of Mayor Lombardo and Council Member Abel to meet with Basin Wide Foundation representatives to discuss facility transition provisions.

At the meeting of May 6, 2014, the Town Council directed staff to proceed with the acquisition process.

Recommendation: That the Town Council approves the acquisition agreement subject to non-substantive changes, authorizing the Town Attorney, Mayor and Town Manager to sign the Agreement and all necessary documents to open and close escrow and to acquire the property.

Executive Summary: On May 6, 2014, the Town Council provided direction to staff on the transition of the newly constructed Brehm Park.

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: Based upon Town Council direction at the meeting of May 6, 2014, the attached Draft Acquisition Agreement has been prepared for acquisition of the park property. The Agreement is currently under review and revision by the Town and Basin Wide Foundation. Additional details are anticipated to be presented to the Town Council at the July 15, 2014 meeting.

Reviewed By:	Town Manager	Town Attorney	Mgmt Services	Dept Head

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

The Town Council direction included the following.

- Transition date of July 1, 2014;
- Town to own the Park facility;
- Basin Wide Foundation to complete playground equipment installation, fall surface, and playground equipment shade sails;
- Town to complete west parking lot;
- Town to complete Palm street improvements;
- Town 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. While these funds would be General Fund resources in year one, this program is eligible for CDBG allocation in subsequent years;
- Basin Wide Foundation to have opportunity to complete roller derby flat track;
- The General Fund expenditures for the Youth Sports Participation Program, include prioritization given to Town of Yucca Valley residents;
- Staff to 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;

Staff and Basin Wide foundation are addressing necessary details in the Draft Agreement at this time.

Alternatives: Staff recommends no alternative actions.

Fiscal impact: Annual operating costs for the Park are incorporated in the FY '14/15 & '15/16 Budgets. Escrow related costs will be funding from the Town's Capital Projects – Contingency account, and are conservatively estimated at $5,000.

Palm street improvements are estimated at approximately $70,000, and the completion of the west parking lot is estimated at approximately $100,000 to $150,000.

Attachments: Draft Agreement
May 6, 2014 Town Council Minutes

REAL PROPERTY ACQUISITION AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS REAL PROPERTY ACQUISITION AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made this ___ day of _____, 2014 ("**Agreement Date**") by and among the **TOWN OF YUCCA VALLEY**, a public body, corporate & politic ("~~City~~Town"), **BASIN WIDE FOUNDATION—YOUTH SPORTS PARK COALITION**, a California non-profit corporation ("**Donor**") and **FIDELITY NATIONAL TITLE INSURANCE COMPANY**, a California corporation ("**Escrow Holder**").

RECITALS:

A. Donor is a non-profit corporation dedicated to the acquisition and development of a park facilities for youth sports ~~soccer~~ programs.

B. Donor is the owner of six (6) parcels of real property (APNs 0595-131-01, 0595-131-49, 0595-131-45, 0595-131-17, 0595-031-47 & 0595-131-11) located to the north east of the intersection of Sunland Drive and Palm Avenue in the Town of Yucca Valley and legally described on Exhibit A attached hereto ("**Property**") and depicted in Exhibit B.

C. Donor desires to transfer the Property to the ~~City~~Town in return for the ~~City~~Town's commitment to accept, maintain and operate the Property as a public park.

NOW, THEREFORE, the parties agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY. Upon the terms and conditions set forth in this Agreement, ~~City~~Town hereby agrees to accept from Donor, and Donor agrees to transfer to ~~City~~Town the Property.

2. OPENING OF ESCROW. Within three (3) business days of execution of this Agreement, the parties shall open an escrow ("**Escrow**") with Escrow Holder by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder and accepted by Escrow Holder as evidenced by Escrow Holder's execution of this Agreement ("**Opening of Escrow**").

3. CONSIDERATION. The consideration for the transfer of the Property is the agreement of the ~~City~~Town to accept, operate and maintain the Property. ~~City~~Town shall deposit all closing costs with Escrow Holder in "good funds" which is defined to mean a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California, or cash.

4. FUNDS AND DOCUMENTS REQUIRED FROM ~~CITY~~TOWN AND DONOR.

4.1. Donor. Donor agrees that on or before 12:00 noon one (1) business day prior to the Closing Date, Donor will deposit with Escrow Holder all items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation:

a. Executed and recordable grant deed in the form attached hereto as Exhibit C ("**Grant Deed**") and such other documents as reasonably required by Title Company.

b. A Non-Foreign Affidavit ("**Non-foreign Affidavit**").

c. Any documents or affidavits required by the Title Company for the issuance of the Title Policy to confirm, among other things, that no construction has occurred on the Property for six (6) months prior to the Agreement Date and that no third parties have any rights with respect to the Property including but not limited to tenants[CY1][CY2].

d. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2. ~~City~~Town. ~~City~~Town agrees that on or before 12:00 noon one (1) business day prior to the Closing Date, ~~City~~Town will deposit with Escrow Holder all funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation:

a. A Preliminary Change of Ownership Statement completed in the manner required by San Bernardino County.

b. Written acceptance of the Grant Deed as required by Govt Code §27281.

c. Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

5. CLOSING DATE; TIME IS OF ESSENCE.

5.1. Closing Date. Escrow shall close as soon as practicable but, in no event, after _____, 2014 ("**Closing Date**"), unless otherwise extended in writing by the parties. The terms "Close of Escrow" and/or "Closing" are used herein to mean the date that the Grant Deed is filed for recording by the Escrow Holder in the Official Records in accordance with the terms of this Agreement.

5.2. Time is of Essence. ~~City~~Town and Donor specifically understand that time is of the essence. ~~City~~Town and Donor specifically agree to strictly comply and perform their obligations herein in the time and manner specified and waive any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement. Unless otherwise expressly provided in this Agreement, any reference in this Agreement to time for performance of obligations or to elapsed time shall mean Pacific Standard Time and time periods shall mean consecutive calendar days, months or years, as applicable.

5.3. Extensions. The ~~City~~Town Manager or his designee shall in its sole and exclusive discretion, on behalf of ~~City~~Town, have the authority to approve written requests for extending any deadline under this Agreement. All extension shall be in writing and signed by the ~~City~~Town Manager or his designee.

6. TITLE POLICY.

6.1. Title Policy. At Closing, Fidelity National Title Insurance Company ("**Title Company**") shall issue an ALTA (non-extended) owner's title insurance policy in the amount of the Five Hundred Twenty-Five Thousand Seven Hundred Dollars ($525,700)[1] showing title vested in ~~City~~Town subject only to (i) non-delinquent real property taxes, and (ii) Exceptions ___, ___ & ___ as shown on Preliminary Title Report No. _____ issued as of July __, 2014 ("**Preliminary Title**

[1] This amount is the total paid by Donor for the acquisition of the Property.

Report"). The Title Policy shall include any extended coverage or endorsements that ~~City~~Town has reasonably requested at ~~City~~Town's sole expense. If the Preliminary Title Report is amended for any reason prior to Closing, ~~City~~Town shall have the right to approve any new exceptions in its sole discretion.

6.2. Possession. Possession of the property shall be delivered by Donor to ~~City~~Town no later than 5:00 p.m. on the Closing Date free of all tenancies and claims of ownership. Donor shall remove any personal property not included in this transfer and all debris from the Property prior to relinquishing the Property to ~~City~~Town.

7. TRANSFER DISCLOSURE STATEMENT; DUE DILIGENCE.

7.1. Transfer Disclosure Statement. Within three (3) days after the Opening of Escrow, Donor shall provide a completed and executed Transfer Disclosure Statement (as specified in Civil Code Section 1102) ("**TDS**") applicable to APN 0595-131-49 (residential parcel) for ~~City~~Town's review and approval. If ~~City~~Town disapproves the completed TDS, ~~City~~Town shall notify Donor with a copy to Escrow Holder within the Due Diligence Period (as defined in Section 7.2).

7.2. Due Diligence. For a period of twenty (20) days following the Opening of Escrow ("**Due Diligence Period**"), ~~City~~Town shall have the right to review and inspect the Property. Donor grants to ~~City~~Town, its agents and employees, upon reasonable notice to Donor, a limited license to enter the Property for the purpose of conducting such due diligence as reasonably required by ~~City~~Town at ~~City~~Town's sole cost and expense. As a condition to ~~City~~Town's entry and inspection, ~~City~~Town shall keep the Property free and clear of all materialmen's liens, lis pendens or any other liens arising out of the entry and any work performed under this Agreement. ~~City~~Town shall notify Donor in writing ("**~~City~~Town's Due Diligence Notice**") on or before the expiration of the Due Diligence Period of ~~City~~Town's approval of the condition of the Property, including, but not limited to, the TDS.

8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

8.1. ~~City~~Town's Obligations. The obligations of ~~City~~Town under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by ~~City~~Town of each of the conditions precedent set forth below. If any such condition is not satisfied or waived by ~~City~~Town at or prior to the Close of Escrow for any reason other than a default by ~~City~~Town, ~~City~~Town may, in its sole discretion and without limiting any of ~~City~~Town's legal remedies or remedies under this Agreement, terminate this Agreement by written notice to Donor:

a. Title Company will issue the Title Policy as required by Section 6.1.

b. ~~City~~Town has approved all Due Diligence matters on or before the Due Diligence Date.

c. Escrow Holder holds and will deliver to ~~City~~Town the instruments and funds, if any, accruing to ~~City~~Town pursuant to this Agreement.

d. Donor is not in default under this Agreement.

8.2. Condition to Donor's Obligations. The obligations of Donor under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Donor of the following conditions precedent:

a. Escrow Holder holds and will deliver to Donor the instruments and funds accruing to Donor pursuant to this Agreement.

b. ~~City~~Town is not in default under this Agreement.

9. REPRESENTATIONS, WARRANTIES AND COVENANTS. Donor, to the best of Donor's knowledge, makes the following representations, warranties and covenants to ~~City~~Town, each of which is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Property:

a. Donor has received no notice and/or has no knowledge that any governmental authority or any employee or agent thereof considers the present or proposed operation, use or ownership of the Property to violate or have violated any ordinance, rule, law, regulation or order of any government or agency, body or subdivision thereof, or that any investigation has been commenced or is contemplated respecting such possible violations.

b. There are no pending or threatened lawsuits or claims which would affect the Property.

c. The Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Donor has received no written notice from any third parties, prior owners of the Property, or any federal, state or local governmental agency indicating that any hazardous waste remedial or clean-up work will be required on the Property. There are no environmental, health or safety hazards on, under or about the Property, including but not limited to soil and groundwater conditions.

d. There are no contracts, leases, claims or rights affecting the Property and no agreements entered into by or under Donor that shall survive the Close of Escrow[CY3].

e. Until the Closing, Donor shall not do anything which would impair Donor's title to any of the Property.

f. Donor is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state Donor under California Revenue and Tax Code Section 18805 and that it will deliver to ~~City~~Town through Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

g. Until the Closing, if Donor learns of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Closing, Donor shall immediately give written notice of such fact or condition to ~~City~~Town.

h. No construction or repair work has been done on the Property within the six (6) months prior to the Opening of Escrow[CY4].

i. The information provided in the TDS is true, correct and complete.

In addition to any other indemnification obligations set forth in this Agreement, Donor agrees to indemnify, defend with counsel selected by ~~City~~Town, protect and hold harmless ~~City~~Town, its officers, employees and agents from and against all claims, damages, costs, liabilities and expenses of any kind whatsoever paid, incurred or suffered by or asserted against the Property or any indemnified party directly or indirectly arising from or attributable to any breach by Donor of any of its agreement warranties or representations set forth in this Agreement. This provision together with Sections 10.3, 12 & 14 shall survive Close of Escrow.

10. ESCROW PROVISIONS.

10.1. Escrow Instructions. Sections 1 through 5, inclusive, 6.1, 8, 10 & 13 shall constitute escrow instructions to Escrow Holder. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. ~~City~~Town and Donor will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. ~~City~~Town and Donor agree to execute additional instructions, documents and forms provide by Escrow Holder that are reasonably necessary to close Escrow.

10.2. Miscellaneous. Escrow Holder shall deliver the Title Policy to the ~~City~~Town and instruct the San Bernardino County Recorder to mail the Grant Deed to ~~City~~Town at the address set forth below after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in San Bernardino County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions. Within three (3) days of Opening of Escrow, Escrow Holder shall provide the statement of information form to Donor who shall complete and return same to Escrow Holder within three (3) days of receipt.

10.3. Proration of Real Property Taxes. All non-delinquent general and special real property taxes shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Donor shall pay any delinquent real property taxes. Donor acknowledges that ~~City~~Town is a governmental agency not subject to payment of real property taxes. Accordingly, Donor shall be solely responsible for seeking a refund of any overpayment of taxes from the appropriate taxing agencies. Any supplemental tax bills received after Close of Escrow shall be paid by Donor to the extent they relate to a period prior to Close of Escrow and in the event that the supplemental tax bill covers a period commencing before and continuing after Close of Escrow, Donor will pay the tax and be solely responsible for seeking any refund from the appropriate taxing agency. The provisions of this Section shall survive Close of Escrow.

10.4. Costs; Documentary Transfer Taxes; Closing Statement.

a. **Cost Allocation.** ~~City~~Town shall pay the costs for the Title Policy, any documentary transfer taxes, the entire Escrow fee, and other closing costs and fees ("**Donor's Charges**"). ~~City~~Town is exempt from recordation fees for the Grant Deed.

b. **Documentary Transfer Taxes.** ~~City~~Town is exempt from documentary transfer taxes. However, the documentary transfer tax amount shall not be shown on the Grant Deed and Escrow Holder shall cause a separate statement of such taxes to be submitted to the County Recorder concurrently with the Grant Deed as authorized pursuant to Section 11932 of the California Revenue and Taxation Code.

c. **Closing Statement.** At least three (3) business days prior to the Closing Date Escrow Holder shall furnish ~~City~~Town and Donor with a preliminary Escrow closing statement which shall include each party's respective shares of costs. The preliminary closing statement shall be approved in writing by ~~City~~Town and Donor. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to ~~City~~Town and Donor.

10.5. Termination of Escrow. If Escrow fails to close as provided above, either party may elect to terminate this Agreement and the Escrow by delivering written notice to the other party and

Escrow Holder. Upon such termination of this Agreement and the Escrow not as the result of the breach by either party, Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same.

10.6. Information Report. Escrow Holder shall file and ~~City~~Town and Donor agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. ~~City~~Town and Donor also agree that ~~City~~Town and Donor, their respective employees and attorneys, and Escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither ~~City~~Town nor Donor shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

10.7. Brokerage Commission. ~~City~~Town and Donor each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. ~~City~~Town and Donor each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

11. RISK OF PHYSICAL LOSS. Risk of physical loss to the Property shall be borne by Donor prior to the Close of Escrow and by ~~City~~Town thereafter. In the event that the Property shall be damaged by fire, flood, earthquake or other casualty ~~City~~Town shall have the option to terminate this Agreement, provided notice of such termination is delivered to Donor within ten (10) days following the date ~~City~~Town learns of the occurrence of such casualty. If ~~City~~Town fails to terminate this Agreement pursuant to the foregoing sentence within said ten (10) day period, ~~City~~Town shall complete the acquisition of the Property, in which case Donor shall assign to ~~City~~Town the interest of Donor in all insurance proceeds relating to such damage. Donor shall consult with ~~City~~Town regarding any proposed settlement with the insurer and ~~City~~Town shall have the reasonable right of approval thereof. Donor shall hold such proceeds until the Close of Escrow. In the event this Agreement is terminated for any reason, ~~City~~Town shall have no right to any insurance proceeds.

12. NO COLLUSION. No official, officer, or employee of ~~City~~Town has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of ~~City~~Town participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or "non interest" pursuant to California Government Code Sections 1091 and 1091.5. Donor warrants and represents that she has not paid or given, and will not pay or give, to any third party including, but not limited to, ~~City~~Town or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Agreement. Donor further warrants and represents that she has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of ~~City~~Town, as a result or consequence of obtaining this Agreement. Donor is aware of and understands that any such act(s),

omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

13. MISCELLANEOUS

13.1 Assignment. Neither ~~City~~Town nor Donor may assign this Agreement or any of its rights or obligations hereunder (including, without limitation, its rights and duties of performance) to any third party or entity without the prior written consent of the other party which shall not be unreasonably withheld, conditioned or delayed. Agreement will be binding upon and inure to the benefit of each of the parties hereto and, except as otherwise provided herein, their respective legal successors and permitted assigns.

13.2 Notices. Any notices, demands or communications under this Agreement between the parties shall be in writing, and may be given either by (i) personal service, (ii) overnight delivery, or (iii) mailing via United States mail, certified mail, postage prepaid, return receipt requested ("**US Mail**"), addressed to each party as set forth below or such other address as may be furnished in writing by a party, and such notice or communication shall, if properly addressed, be deemed to have been given as of the date so delivered, or three (3) business days after deposit into the U.S. Mail.

To Donor:	Basin Wide Foundation–Youth Sports Park Coalition 56711 29 Palms Hwy Yucca Valley, CA 92284 Attn: _____
To ~~City~~Town:	Town of Yucca Valley 57090 29 Palms Highway Yucca Valley, California 92284 Attention: Deputy ~~City~~Town Manager
With Copy to:	Aleshire & Wynder, LLP 18881 Von Karman Ave. Suite 1700 Irvine, CA 92612 Attention: Lona Laymon, Esq. Facsimile: 949 223-1180

13.3 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

13.4 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the parties agree that a court of competent jurisdiction in San Bernardino County shall be the sole venue and jurisdiction for the bringing of such action.

13.5 Legal Fees and Costs. In the event of any litigation or other legal proceeding including, but not limited to, arbitration or mediation between the parties arising from this Agreement, the prevailing party will be entitled to recover, in addition to any other relief awarded or granted, its reasonable costs and expenses (including attorney's fees) incurred in the proceeding.

13.6 Final Agreement. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter[CYS].

13.7 Construction. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against a party under any rule of construction, including the party primarily responsible for the drafting and preparation of this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

13.8 Qualification; Authority. Each individual executing this Agreement on behalf of a party which is an entity, represents, warrants and covenants to the other party that (a) such person is duly authorized to execute and deliver this Agreement on behalf of such entity in accordance with authority granted under the organizational documents of such entity, and (b) such entity is bound under the terms of this Agreement.

13.9 Force Majeure. Each party's performance under this Agreement shall be excused to the extent that such performance is hindered, delayed or made commercially impractical by causes beyond that party's reasonable control.

13.10 Modifications in Writing. Any modification or amendment of any provision of this Agreement must be in writing and executed by both parties. A copy of any such modification or amendment shall be promptly provided to Escrow Holder.

13.11 No Waiver. The failure of either party to enforce any term, covenant, or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant, or condition of this Agreement at any later date or as a waiver of any term, covenant, or condition of this Agreement.

13.12 No Third Party Beneficiaries. This Agreement is only between the parties, and is not intended to be nor shall it be construed as being for the benefit of any third party.

13.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.

13.14 Exhibits. Exhibits A, B and C attached hereto are incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Residential Real Property and Escrow Instructions as of the date set forth above.

DONOR:

BASIN WIDE FOUNDATION – YOUTH SPORTS PARK COALITION, a California non-profit corporation

By: _____

Its: _____

~~CITY~~TOWN:

TOWN OF YUCCA VALLEY, a public body, corporate and politic

By: _____
Robert Lombardo, Mayor

_____, 2014

ATTEST:

_____
Lesley Copeland, Town Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Lona Laymon
Town Counsel

ESCROW HOLDER:

Accepted and agreed to:

FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation

By: _____

Its: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

That certain real property in the State of California, County of San Bernardino, Town of Yucca Valley, as described as follows:

TOGETHER WITH **all existing electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar systems, built-in appliances (including but not limited to, the dishwasher and microwave oven with vent system), window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, private integrated telephone systems, air coolers/conditioner, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water softeners, water purifiers, security systems/alarms.**

EXHIBIT "B"
DEPICTION OF PROPERTY

Depiction of Property

* Basin Wide Foundation - Youth Sports Park Coalition, a non-profit corporation

EXHIBIT "C"
GRANT DEED

CHAPTER 12.20 OFTHE 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.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager
Alex Qishta, Project Engineer
Date: July 2, 2014
For Council Meeting: July 15, 2014

Subject: Black Rock Canyon Road

Prior Council Review: On June 23, 2014, the Town Council approved a contract amendment per Section 1.10 of the original Contract between the Town of Yucca Valley and Matich Corporation to add Black Rock Canyon Road repair to the scope of work, subject to easement acquisition on the east side of Black Rock Canyon Road, and directed staff to return to the Town Council at the meeting of July 15, 2014 with the recommended area of improvement and maintenance for Black Rock Canyon Road; ; and directed staff to proceed with the amended traffic control plan enabling two open travel lanes for both east and west bound traffic on SR 62 at the end of each work day and on weekends. The Council action also amended the 2014/15 budget transfer $30,800 from Fund 516 to Fund 527.

Recommendation: That the Town Council:

Alternative 1: Adopts the Resolution, approves the Maintenance Area of Black Rock Canyon Road, between the Town's southern boundary and to the northern edge of San Marino Drive, identified on Attachment A to the Resolution, directs staff to proceed with obtaining necessary easements and accepts Black Rock Canyon Road into the Town's Maintained Road System on the date that Matich Corporation begins work on Black Rock Canyon Road, directing the Town Engineer to report back to the Town Council on the effective date of acceptance.

Alternative 2: Direct staff to proceed with preparation of shelf ready construction plans, and to return to the Town Council with necessary budget appropriations and supportive actions.

Executive Summary: Black Rock Canyon Road is not in the Town Maintained Road System, nor is it maintained by the National Park Service. The County of San Bernardino did not maintain the road prior to incorporation. Because of the lack of long term maintenance, the edges of the roadway have severely eroded, there is severe potholing of the pavement, and in general the surface is in severe disrepair.

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

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

As previously discussed, Black Rock Canyon Road provides access to public facilities, including the Town's South Park as well as Black Rock Campground owned and operated by the NPS.

Traffic Safety Policy No. 5 establishes the criteria for roads to be accepted into the Town's Maintained Road System. Traffic Safety Policy was last amended in 1994.

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: Black Rock Canyon Road from the south side of San Marino Drive southerly to the National Park entrance is not within the Town Maintained Road System. Because of this the roadway has now developed severe potholing as well as edge raveling. The existing roadway is in such disrepair that Joshua Tree National Park (NPS) and residents along the road have requested that the Town begin maintenance.

The Town applied for grant funds in April 2013 in the amount of $670,000, but the Town's application was not successful. The Town will be applying for construction fund grants when those opportunities arise.

The Town has taken a number of roadway segments into the Maintained Road System since incorporation. These have included primarily General Plan designated major arterials/collector system roads and roads which lead to public facilities. Examples including the following.

Sunnyslope Drive:	Pioneertown Road to State Route 247
Paxton Road:	Imperial to Balsa
Onaga Trail:	Kickapoo to Jemez
Onaga Trail:	Handford to Palomar
Onaga Trail:	Warren Vista to Frontera
Navajo Trail:	Jemez to Kickapoo
Sage:	Mountain View to Joshua Drive
Joshua Drive:	Church Street to Acoma
Malin Way:	Skyline Ranch Road to Paseo Los Ninos
Kickapoo Trail:	N of SR 62 to Yucca Trail
Kickapoo Trail:	Sante Fe Trail to Onaga

Skyline Ranch Road: SR 247 to Malin Way

The staff recommendation brought before the Town Council for taking Black Rock into the Town's Maintained Road System is based on the fact that the road provides access to a Town facility, South Park, and that the road provides access to the NPS campground facility. As the Council is aware, the National Park Service has indicated they will provide no funding to the reconstruction or maintenance of Black Rock, but will assist the Town in seeking and applying for grant resources.

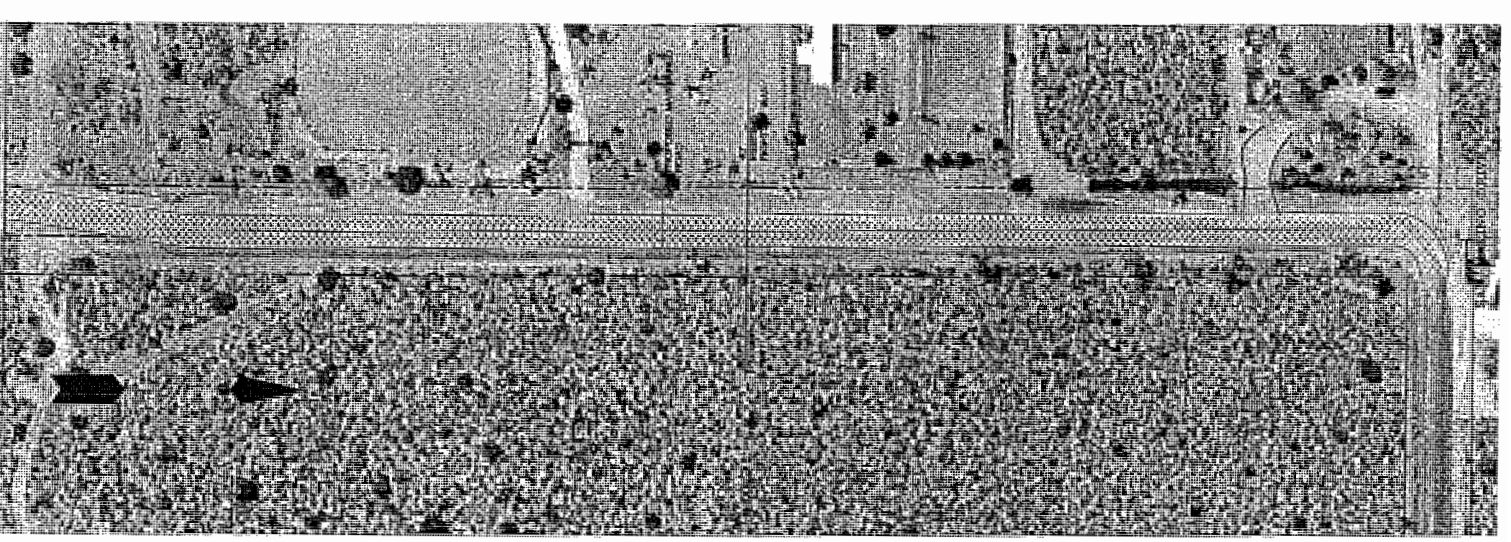
Traffic Safety Policy No. 5 establishes the standards by which roads may be dedicated to the Town for ongoing maintenance. These standards ensure that privately developed roads meet minimum Town standards before being accepted into the Town's Maintained Road System, similar in practice to the County of San Bernardino prior to the Town's incorporation. When roads were not developed to Town (or County) standards, those roads were not accepted into either Maintained Road System.

Rancho Mesa Subdivision (County)
Shatin Heights Subdivision (County)
Douglas Lane, Yucca Messa to Indio (County)
Hopi Trail, Navajo to Mt. View/Highland (County)
Desert Vista Village Subdivision (Town)
Black Rock Canyon Road, San Marino south to NPS property (County)

The recommended action includes the following.

Grind the existing pavement and grade a 26 foot wide dirt roadway which would be maintained by the Town.

The paved portion of the existing surface will be ground/pulverized. A twenty-six foot wide roadway would then be graded, compacted and maintained as a dirt road. The grading



would occur such that the flood waters would be directed to the easterly side of the road to reduce the possibility of damage to the existing driveways. The existing surfaces on either side of the 26' maintained roadway would not be maintained after the initial tie-in to the new roadway.

The initial grinding and grading of the roadway will be performed by Matich, who are currently working on the PLHD project. Their costs are $28,000.

Maintenance work would include grading/blading the dirt road to minimize "wash boarding" of roadway. Maintenance would be performed only on the twenty-six foot wide road. Town staff believes with the existing amount of traffic using the road that grading would need to occur on a monthly basis. Maintenance on a monthly basis is estimated to cost $20,000 per year.

As discussed above, in addition to the monthly maintenance of the road, damage from storm waters flowing along the roadway would need to be repaired after each storm. This maintenance would only include restoring the graded surface to the proposed 26 foot width and filling any channels created during the storm that affect the roadway, not necessarily anything else in the right of way. The cost of repairing the roadway due to flooding is indeterminate as the severity of the flooding will determine the amount of repair needed.

Staff does not recommend that the roadway be incorporated into the Town maintained system until such time as the easterly thirty (30) feet of ultimate street right of way has been obtained. Staff has contacted the property owner about granting the right of way, and has sent him the necessary forms. We are awaiting word on whether or not they are agreeable, although initial indications are that they will grant the easement.

If the easterly right of way is not granted Staff is concerned that grading on the west side may adversely affect the flooding of the east side causing erosion beyond that which currently occurs. The Town could be held liable for such damage.

In all alternatives discussed, with the exception of Alternative Three, there is the possibility that the improvements are completed, and the monies spent, and then within a short time a major storm event could occur that would cause major damage to the new improvements. This is due to the potential volume of flood waters that flow south to north on Black Rock Canyon Road in large storm events. Therefore the Town runs the risk of spending money on improving the roadway only to have to spend the same amount of money to repair them due to the lack of necessary drainage improvements constructed. Alternative Three includes drainage improvements which would preclude substantial damage from even major storm events.

Alternatives:

Alternative One: Improve the existing roadway with 26 feet of pavement 4" minimum thickness.

This alternative would place a leveling course on the existing roadway, and a portion of the un-paved area, to create a 26 foot wide roadway. This twenty-six foot wide roadway would then be overlayed with sufficient asphalt for a four (4) inch, minimum, thickness. Grading of the shoulders would then be performed to provide a smooth transition between the paved surface and the shoulders.

The advantage of this Alternative would be reduced annual maintenance costs and provide a paved/improved surface. A very preliminary rough estimate for this work would be approximately $100,000. The annual maintenance costs would be approximately $1,500.

As noted above, there is the risk that the $100,000 could be spent and then the road could be damaged during a sufficiently large storm event to cause substantial additional costs for road reconstruction.

Alternative Two: Improve the road with A.C. paving, curb and gutter, and sufficient drainage improvements to contain the floodwaters within the right of way.

This alternative was presented to previous Councils when the Town applied for a grant to construct the proposed improvements. The amount of the grant application was $679,000 we were unsuccessful in obtaining the necessary funds. The Town and the Park service are still pursuing grant money for this type of improvement, but to date have not been able to procure the required funding.

Alternative Three: Prepare Shelf-Ready Construction Plans:

It is anticipated that the design of the ultimate roadway, along with drainage improvements, would be approximately $50,000 to $60,000. Staff to continue seeking federal monies and grant to completely reconstruct the road.

Fiscal impact: The estimated project costs for the recommended action are summarized below. Funding for maintenance will need to be incorporated into the existing road maintenance budget. Initial costs for Matich to grind and grade the road have we previously approved as a change order to the PLHD project.

Estimated Project Cost (initial)

Grind and grade roadway	$28,000.00

Estimated Project Cost (annual)

Maintain roadway	$20,000.00
Repair storm damage	unknown

Attachments: Resolution No. 14-
Traffic Safety Policy No. 5
Town Council Meeting Minutes of May 6, 2014 and June 23, 2014

RESOLUTION NO. 14-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, APPROVING THE MAINTENANCE AREA FOR BLACK ROCK CANYON ROAD AS IDENTIFIED ON ATTACHMENT "A" TO THIS RESOLUTION AND ACCEPTING BLACK ROCK CANYON ROAD INTO THE TOWN'S MAINTAINED ROAD SYSTEM AT THE TIME THAT MAINTENANCE EFFORTS ARE INITIATED

WHEREAS, Black Rock Canyon Road provides access to public facilities, including South Park and Black Rock Campground; and

WHEREAS, access to public facilities is an important element of making those public facilities available to residents and public facility users; and

WHEREAS, Traffic Safety Policy No. 5 identifies requirements and standards established by the Town for accepting roads offered to the Town into the Town's Maintained Road System; and

WHEREAS, acquisition of easements along the eastern side of Black Rock Canyon Road is necessary in order for the Town to maintain the roadway; and

WHEREAS, the actions described in this Resolution shall only be effective with the offer of dedication of the necessary easements and the Town's acceptance of those easements.

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

Section 1: The Town Council approves the Maintenance Area of Black Rock Canyon Road, between the Town's southern boundary and to the northern edge of San Marino Drive, identified on Attachment A to the Resolution.

Section 2: The Town Council directs staff to proceed with obtaining necessary easements and only approves these actions if the easements are offered and the Town accepts the easements.

Section 3: The Town Council accepts Black Rock Canyon Road into the Town's Maintained Road System on the date that Matich Corporation begins work on

Black Rock Canyon Road.

Section 4: The Town Council directs the Town Engineer to report back to the Town Council on the effective date of acceptance.

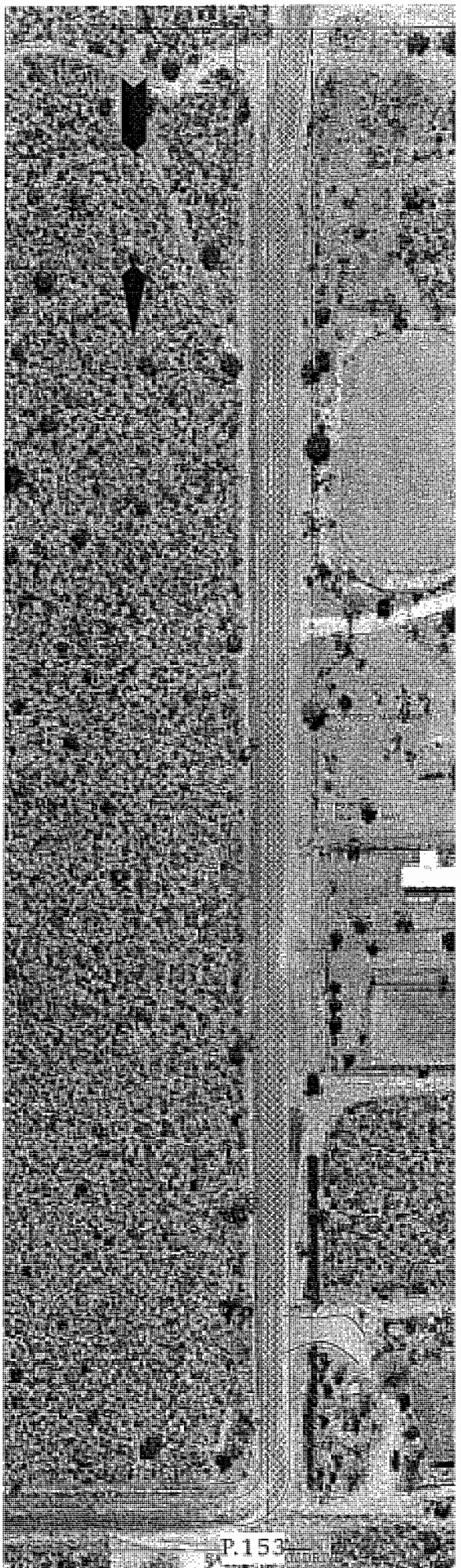
APPROVED AND ADOPTED THIS 15TH DAY OF July, 2014.

_____
MAYOR

ATTEST:

_____
TOWN CLERK

EXHIBIT A



TRAFFIC POLICY #5

ACCEPTANCE OF ROADS INTO THE MAINTAINED SYSTEM

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1. Prior to the Town's acceptance of roadways for maintenance, the Town shall require granting of right-of-way and completion of improvements. These improvements must be in accordance with the minimum improvement level standards, including hot-mix asphalt concrete pavement (over appropriate sub-base material), appropriate drainage improvements and appropriate traffic control measures, as approved by the Town's Engineering Division, Determination of required paving structural sections (thickness) will be based upon development and approval of policies and procedures for establishing Traffic Indexes (as a measure of the anticipated traffic loading) and R-values (as a measure of the strength of the underlying soil).

2. When property owners request assistance, the Town will assist in the completion of the required improvements through formation of groups such as assessment districts, community service districts, etc.

3. For new developments, street construction and improvements shall be in conformance with the minimum standards outlined above, OR continuous, long-term private maintenance of roadways must be provided for through the establishment of a homeowner's association, community service district, or other similar method.

4. The Town may consider accepting designated major arterials, collectors and secondary streets, as identified in the General Plan Circulation Element, into the maintained system without the obligation that property owners construct the street to current standards.

Approved by TAC 7/26/93
Approved by Town Council 8/19/93
Amendment #1 approved by TAC on 2/28/94
Amendment #1 approved by Town Council 3/3/94

Report for Previously Formed Street and Drainage and Landscape and Lighting Maintenance Districts.

The Town has formed Landscape and Lighting maintenance Districts and Street and Drainage (Benefit) Assessment Districts as a condition of development projects. The formation of these districts began in 2005 and there are nine maintenance districts in existence today. The assessment Engineers Report establishes the amount of annual assessment in each of the districts.

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

Council Member Leone sought confirmation that these assessments are for new development only.

Mayor Pro Tem Huntington commented on the assessment numbers, noting that there are minor adjustments from the prior year.

Council Member Abel moved to adopt Resolution No. 14-21, approving and confirming the assessments as set forth in the Engineer's Reports and declares its intent to levy and collect assessments upon real property within the existing districts for the 2014-15 tax year, and authorizes the levy of assessments as recommended in the Engineer's Reports. 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

DEPARTMENT REPORTS

14. Public Lands Highway Discretionary Funds Project (PLHD)
SR62, Apache Trail to Palm Avenue – Town Project No. 8661
Federal Project No. PLHL04-5466(015)
Contract Amendment; 2014-15 Budget Amendment
Black Rock Canyon Road; Additional Traffic Control

Town Project Engineer Qishta presented the staff report requesting an amendment to the PLHD contract with Matich Corporation to include repairs to Black Rock Canyon Road into the project scope. Pursuant to Town Council direction to bring Black Rock Canyon Road into the Town's Maintained Road System, staff has identified a temporary solution to bring the road to a drivable status. This involves eliminating potholes and deteriorated asphalt road surface by pulverizing the existing asphalt in place, followed by grading and compacting.

Continued research to acquire additional financial resources is necessary to construct a typical asphalt concrete road. It is estimated that the temporary solution will require grading approximately every 2-3 months, and after significant storm events.

The requested amendment to the Matich contract also includes provisions to minimize the impact to traffic on SR 62 during construction. With temporary restriping, labor and equipment, the contractor will open both lanes of traffic at the end of each day and during the weekends.

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

Council Member Abel commented favorably on the inclusion of Black Rock Canyon Road into the maintained road system, and would like to see the road fully paved in the near future. Abel stated he is impressed with Matich and how quickly the company is moving along with the sidewalks.

Mayor Pro Tem Huntington inquired if the Black Rock Canyon Road repair includes any work on San Marino. Huntington also explained that this is not a permanent solution and would like to see agreements with the residents along Black Rock Canyon Road, with the understanding that the property owners will be responsible for certain aspects of the road maintenance.

Council Member Leone commented on the number of vehicles traveling along Black Rock Canyon Road and wished this was taken care of a long time ago. Leone also commented favorably on the work along the highway and the flexibility of opening and closing lanes at the appropriate times.

Mayor Pro Tem Huntington moved to:

- Approve a contract amendment per Section 1.10 of the original Contract between the Town of Yucca Valley and Matich Corporation to add Black Rock Canyon Road repair to the scope of work in the amount of $28,000, subject to easement acquisition on the east side of Black Rock Canyon Road;

- Amend the 2014/15 Adopted Budget to transfer $30,800 ($28,000 plus $2,800 contingency) from Fund 516 to Fund 527.

- Direct staff to return to the Town Council at the meeting of July 15, 2014 with the recommended area of improvement/maintenance for Black Rock Canyon Road and a Resolution establishing the timeline for accepting Black Rock Canyon Road into the Town's Maintained Road System;

- Direct staff to proceed with the amended traffic control plan enabling two open

travel lanes for both east and west bound traffic on SR 62 at the end of each work day and on weekends

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

15. Resolution No. 14-22; Authorization of the Levy of a Special Service Tax upon Real Property within Community Facilities District (CFD) No. 11-1

Town Project Engineer Qishta presented the staff report for the authorization of the levy of a special service tax upon real property within CFD No. 11-1 As a legislative body, the Town Council by resolution as provided in section 53340 of the ACT, determines the specific special tax rate and amount to be levied for the current or future tax years. The special tax rate to be levied shall not exceed the maximum rate.

The Town has formed three such service areas included in CFD No. 1-1. These include Warren Vista Center CFD, Annexation Area No. 1, Improvement Area 1; Dollar General CFD, Annexation Area No. 1, Improvement Area 1; and, Super Wal-Mart CFD, Annexation Area No. 2, Improvement Area 3.

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

Council Member Leone Moved to adopt Resolution 14-22, authorizing the annual levy of special taxes for Community Facility District No. 11-1, for fiscal year 2014/2015. 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

16. Resolution No. 14-23; Budget Amendment; Recall Petition Summary

Town Clerk Copeland presented the staff report requesting a 2013-14 fiscal year budget amendment for unanticipated expenditures related to the recall petition process incurred during the fiscal year.

Mayor Lombardo opened public comments.

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.

TOWN COUNCIL STAFF REPORT

To:	Honorable Mayor & Town Council
From:	Shane R. Stueckle, Deputy Town Manager
Date:	July 8, 2014
For Council Meeting:	July 15, 2014
Subject:	Town Council Policy Discussion and Direction to Staff Posting Regulatory Signs on Private, Non-Maintained Dirt Roads

Prior Council Review: Town Council formal policy action on dirt roads was first addressed in November, 1993. Town Council policy was amended in 1994. In 2006, the Town modified prior San Bernardino County procedures for parcel and tract maps within dirt road neighborhoods, ensuring that public easements were dedicated with the creation of new roads with those subdivisions. While numerous other discussions and studies have taken place since 1994, no further policy amendments related to taking any actions on non-maintained dirt roads have been enacted since that time.

The Town Council discussed this matter on September 13, 2007. The governing laws and facts have not changed since that time.

Recommendation: That the Town Council:

Alternative 1: Directs staff to return with mid-year budget review (February/March) with identification of circulation system "collectors" in private non-maintained dirt road neighborhoods that should be considered for bringing into the Town's Maintained Road System.

Alternative 2: Directs staff to reinitiate discussions with San Bernardino County for the potential formation of County Service Areas for road maintenance within the Town.

Alternative 3: Take no action and continue with currently policy implementation.

Alternative 4: Request special legislation through the State legislative process establishing a maximum speed limit of 15 or 25 miles per hour on all non-maintained dirt roads within the Town of Yucca Valley.

Executive Summary: The Town Council requested that this matter be scheduled for Town Council policy discussion and direction.

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

___ Department Report ___ Ordinance Action ___ Resolution Action ___ Public Hearing

___ Consent X Minute Action ___ Receive and File X Policy Discussion

Maintenance of private, non-maintained dirt roads, including posting of regulatory and warning signs, presents many challenges in Yucca Valley. Extensive residential neighborhoods were allowed to be developed without the supporting infrastructure, which was common practice in the desert areas of San Bernardino County, and is illustrated throughout the entire Morongo Basin. The San Bernardino County Office of Special Districts forms County Service Areas (CSAs) and as a separate legal entity, where private property owners agree to tax themselves with revenues pledged to the CSAs to provide road maintenance. State law does not make the CSA tool available to cities.

Providing a maintained "collector" road in the residential neighborhoods served by dirt roads will improve access for neighborhood residents. Road maintenance and construction constraints limit the Town's ability to address all dirt roads within the Town, both now, and in the long term.

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: There are approximately 100 miles of unpaved, non-maintained roads within Yucca Valley's town limits. A significant portion of those unpaved, non-maintained dirt roads are private property, while many fewer of those non-maintained, dirt roads contain public easements. Since 1993, staff, independent consultants, and the Town Attorney have presented the Town Council with information and data regarding the obligations, liability issues, and standards the Town should consider when dealing with the different classification of dirt roads within the Town.

The following information provides a brief chronology of the information provided to the Town Council over the years.

Traffic Safety Policy No. 5 adopted in August 1993, set the standards and criteria for accepting roads in the Town Maintained System. The Policy was amended in 1994 but has not been amended since that time.

November 24, 1997, the Town Council received a report from the Capital Improvement Program Review Committee regarding dirt road maintenance and overall road maintenance financial constraints.

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

___ Department Report ___ Ordinance Action ___ Resolution Action ___ Public Hearing

___ Consent X Minute Action ___ Receive and File X Policy Discussion

In 1998 (February 20, 1998), a comprehensive, formal dirt road study was prepared and presented by Willdan Associates, identifying the engineering aspects of road maintenance, evaluating level of service, costs and frequency of service, along with liability issues and various funding options available to the Town.

In February, 1998, the Town Attorney prepared a memo which provided information regarding the potential liability of the Town if it maintained roads not in the "accepted and maintained system"; the procedures by which the Town may obtain easements/right of ways over roads; and the process of acceptance of roads and streets for dedication and acceptance as part of the public road system. This memorandum also addressed the gift of public funds issue if the Town provided regular maintenance services on dirt roads which are privately owned. Subsequent memos in October, 1999 and March, 2000 discussed other aspects of dirt road maintenance and potential liability.

In November 5, 1998, the Town Council adopted Resolution No. 98-24 for budget appropriations and establishing cooperative programs with San Bernardino County Office of Special Districts for forming CSA's within the Town for dirt road maintenance purposes.

On February 23, 1999, the Town Council adopted Resolution No. 99-3, requesting and consenting to the County proceeding with formation of County Service Areas within the Town for dirt road maintenance programs.

In 2000, Town Attorney, Naomi Silvergleid prepared a memo which discussed the requirements for formation of permanent road divisions, which had not been discussed in the 1998 Willdan study.

A fax from Senator Brulte's legislative staff provided input on this topic.

On May 22, 2000, PARSAC sent a letter that indicated their official position was that they strongly recommended that the Town of Yucca Valley not enter into an agreement to maintain roads that are not owned by the Town. Additionally, two memos from Duane Gasaway to Brad Kilger (then Town Manager), discussed legal constraints, policy issues and limitations and a number of alternatives for maintenance of unimproved roads.

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

___ Department Report ___ Ordinance Action ___ Resolution Action ___ Public Hearing

___ Consent X Minute Action ___ Receive and File X Policy Discussion

On April 9, 2007 PARSAC legal counsel was asked to provide input to staff regarding the issue of posting speed signs on dirt roads not within the Town's maintained road system. The response from Greg O'Dea, one of PARSAC's panel attorneys, was that undertaking any act that could be construed as maintenance on roads not owned by the Town could imply that the Town is assuming the liability and responsibility for the dirt road. The posting of signs without evaluation of the current conditions and engineering studies to support proper signage, could create a situation which ultimately would negate the immunities provided the public entity in the Government Code and the Street and Highways Codes.

Conversely, if the dirt road is within the Town's maintained system the Town has an obligation to maintain a reasonable safe roadway, so that the road does not constitute a dangerous condition of public property. Any liability would be determined under the principles of dangerous condition liability (Government Code Section 835).

If the road provides access to fishing, hunting, camping, hiking, riding, water sports, recreational or scenic areas, then there is immunity pursuant to Government Code Section 831.4, and placing a sign that the road is not maintained would not remove the protection of the immunity.

In a 1991 Appellate Court decision, Matthews v. County of San Bernardino, (233 Cal. App. 3d, 1623, the Court reversed a decision which granted summary judgment to the County and County Service Area 70. The case involved a minor who suffered serious injury when a vehicle in which she was a passenger rolled over after striking a berm on the right-hand shoulder of Desert Front Road. Although the road was not in the County maintained system, the County had provided certain road services to the road in question. Of note, is that the Court distinguished between the absolute immunities provided when an agency DID NOT maintain a road which had not been officially accepted into the local agency's road system, and Government Code section 831.3 which immunized an entity from performance of maintenance or repair on a road not within the maintained system only if the work was performed with reasonable care and left the road in no more dangerous or unsafe condition than it was before the work commenced.

PARSAC's interpretation is that by posting the private or non-maintained roads, the Town creates the potential for liability by taking dominion and control. This is especially the case when there are bad facts and serious injuries, and give any case "settlement value".

The California Vehicle Code provides guidance related to appropriate speed on dirt roads and is supported by the Town's Resolution 03-51 adopted on November 6, 2003. The Basic Speed Law (22350) states: "No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of the highway, and in no event at a speed which endangers the safety of persons or property." Secondly, V. C. 22352 establishes prima facie limits as follows; "V.C. 22352. The prima facie limits are

as follow and shall be applicable unless changed as authorized in this code and, if so changed only when signs have been erected giving notice thereof (A). Fifteen miles per hour. (B) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals".

As illustrated by the brief chronology above, as well as the attachments to this Staff Report, the Town must be cautious in its consideration of taking actions on any road not within the Maintained System.

Evaluating the legal right to enter upon and perform maintenance efforts on those existing non-maintained roads (potential trespass issues), followed by evaluating the expenditure of public funds on private property (potential gift of public funds) are commonly the first steps in the evaluation in considering actions on any roads currently not in the maintained system.

Performing these types of activities on non-maintained roads creates increased risk exposure as the Town's complete immunity is eliminated. Additionally, implementing regular and on-going maintenance programs on non-maintained dirt roads may create the implied obligation of acceptance of that non-maintained dirt road into the Maintained System.

Finally, fiscal considerations must be evaluated throughout this process. The Town's revenues for roadway projects are limited, and any expansion of the maintained system and/or taking actions which increase the Town's risk exposure, all carry varying levels of fiscal impacts.

Alternatives: As identified through the years of research on this matter, Town Staff identified the use or formation of County Service Areas for road maintenance within the Town as the best tool that is available. Counties in California have authority for these types of "districts", and this authority is not granted to incorporated cities. County Service Areas allow property owners to establish their desired level of service, and therefore those property owners can control costs incurred for dirt road maintenance.

As previously discussed, policy consideration should be given to planning for the future construction of paved, maintained roads, which constitute the current backbone roadway system in existing dirt road neighborhoods. This approach would provide paved access to general dirt road neighborhood areas, while the remaining "extended dirt road driveways" would be maintained by private property owners.

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The Town Council may desire to evaluate taking selected dirt roads into the maintained system. This would necessitate evaluating the existence of public easements, potential property/easement acquisition, construction activities to bring those dirt roads to an established minimum standard, and establishing a maintenance schedule/program for those roads.

Fiscal impacts and risk exposure should be carefully evaluated throughout this process and with all alternatives.

Fiscal impact: Vary depending on which alternative Town Council directs staff to pursue.

Attachments:

August 9 1997 Memo to Town Council (continued to Sept 13 1997)
September 13, 1997 Town Council Minutes
Traffic Safety Policy No. 5
November 24, 1997 Memo to Town Council
1998 Memo from Town Attorney Naomi Silvergleid regarding dirt road maintenance
Dirt Road Maintenance Study by Willdan Associates
November 1998 Staff Report – County Service Areas Formation and Administration
October 18, 1999 Town Council Study Session Notes
Permanent Road Division discussion in a Memo from Town Attorney, Naomi Silvergleid, 2000.
2000 Fax from Senator Brulte's legislative staff
2000 Fax from PARSAC recommending that the Town not enter into agreements to maintain roads not owned by the Town.
December 11, 2000 Memo to Town Council
April 3, 2000 Town Council Study Session Notes
Resolution 03-51: Enforcing the California Vehicle Code on Certain Privately owned and maintained roads.
California Vehicle Code Sections 22350 and 22352

program, but doesn't know how far to go without checking on their ability to pay.

Council Member Mayes commented he does have some concern about the unpaid balance, and questioned if the fees for Hi Desert Aquatics is on the same scale as other activities. Community Services Director Schooler commented if the swim team was not using the pool, the Town would not have the chemical and heating expense, they are the only users at that time.

Council Member Luckino moved to approve the facilities use agreement between the Town of Yucca Valley and Hi Desert Aquatics, Inc. Council Member Herbel seconded. Motion carried 5-0 on a roll call vote.

AYES: Council Member Leone, Luckino, Mayes, and Mayor Neeb.
NOES: None
ABSTAIN: None
ABSENT: None

POLICY DISCUSSION

9. Policy Discussion and Direction Posting Speed Signs on Private Dirt Roads.

Deputy Town Manager Stueckle stated this item is a Council request for consideration of placing some form of regulatory or warning signs on non maintained dirt roads. Gave the background of the matter.. Key issues which must be evaluated as part of consideration of taking actions on non-maintained roads include trespass, gift of public funds, dominion and control, performing maintenance on roads not in the maintained system, and increased risk exposure. There are approximately 100 miles of unpaved, non-maintained roads within the Town limits. A significant portion of those roads are private property. Indication from PARSAC is there is a potential for increased risk or liability if the Town takes actions on the dirt roads.

Bill Souder, Yucca Valley, advised that he lives on a dirt road in Rancho Mesa and they maintain them privately. They would like a lower speed limit on those roads. He encouraged the Council to try to find a way to post and enforce a lower speed limit.

Charles McHenry, Yucca Valley, commented that putting speed limit signs on non maintained roads would be a good intention with bad results, and expressed concern about assuming the liability on the roads.

Ramon Mendoza, Yucca Valley, suggested placing signs stating the roads are private roads, don't raise dust, and please travel at safe speeds.

Darril Becker, Yucca Valley, questioned if there is a mandated speed limit within the County as a whole, and whether the Town is considering the idea because it was decided by the County in the past.

Deputy Town Manager Stueckle advised this is a Council policy discussion and not based on anything in the County. This is strictly a policy discussion in regard to this community. The Vehicle Code states that where no radar speed survey is done, the speed limit is not posted, and as long as the speed is safe, the limit is 55 mph.

Council Member Leone commented this has been issue for a long time noting he lives on a dirt road but does not own it. If someone gets into an accident it is not his responsibility because it is for public use, and he can't do anything with it. This request is basically for health and safety reason for residents who live on dirt roads. An un-posted road has a speed limit of 55 mph, but there are also common sense rules dealing with blind intersections. He proposes having 15 mph speed signs at these intersections. The residents do not want to have the roads maintained, just posted for health and safety reasons. He noted the Police Department will not cite for going over the speed limit if the road is not posted, and added that a posted speed limit is the maximum speed one can drive under ideal conditions. The Mojave Desert Air Quality Management District will pay for the signs, so there will be no cost to the Town.

Council Member Luckino questioned if it is possible to place signs where Town owned and maintained streets end and dirt roads start. Deputy Town Manager Stueckle advised that the common placement of signs by jurisdictions where maintained roads end is something to the effect of "end of maintained road system". Council Member Luckino questioned if a speed limit sign could be placed at the end of the maintained road before the dirt road begins. Deputy Town Manager Stueckle advised the sign would have no legal standing. Town Attorney Silvergleid agreed.

Council Member Mayes stated he feels the Council wants to be able to put speed limits on dirt roads, but the question is whether the liability would be too great for the Town to assume.. Stated the Vehicle Code speed limit of 15 mph does apply to dirt roads, and questioned where the prima facia speed limit comes into play. Town Attorney Silvergleid advised at blind intersections. Council Member Mayes commented regarding the provision of immunity pursuant to Government Code Section 831.4 for a road that provides access to fishing, hunting, camping, hiking, riding, water sports, recreational or scenic areas, and questioned if the Council could establish findings the dirt roads provide access to hunting. Town Attorney Silvergleid advised that would be a little difficult.

Council Member Herbel commented regarding the Appellate Court decision listed in the staff report, noting she interpreted it to mean that the liability might not be increased as long as the road is not being made any worse than it was before. She can not see that putting up signs would make a road any worse than it was. Town Attorney Silvergleid

explained dominion and control, noting the odds are if somebody was paralyzed in an accident where the Town had exercised some dominion and control, the case would have significant settlement value.

Mayor Neeb questioned what would happen if the Town accepted dedication of the roads but did not take the roads into the maintained system. Town Attorney Silvergleid stated if the Town exercised some dominion and control it would lose its absolute immunity even if the road was not in the maintained system.

Council Member Leone questioned if roads can be taken into the system where they are not maintained but safety devices can be put up without increasing the liability. Town Attorney Silvergleid advised that if a road has been taken into the maintained system, the Town has an obligation to maintain the road in a appropriate manner. It becomes a question of fact, such as whether or not proper engineering studies were performed. The issue is a matter of increased liability. Council Member Leone advised he is just advocating speed limits at blind intersections. Town Attorney Silvergleid advised that the Council has adopted a resolution allowing the California Vehicle Code to be enforced on dirt roads, so speed limits on dirt roads would be applicable. Council Member Leone commented that the Sheriff's office can not enforce the speed limit unless the road is posted. Lt. Willis advised that the California Vehicle Code applies. The estimated speed would be based on observations by the Officer at the time. Council Member Leone commented there wouldn't have to be a survey on intersections because they are blind.

Council Member Luckino commented this is a liability issue, and the Town has to come to grips with the long term issue, which is bringing all the roads into the maintained system. Council has a responsibility and in the long term has to figure out a funding mechanism to maintain them.

Council Member Mayes questioned the Town's liability on the maintained roads. Town Attorney Silvergleid advised it assumes full responsibility, but if the roads have been maintained properly the liability is mitigated. The Town is not responsible for insuring that no accidents occur. Council Member Mayes questioned the increased liability in taking in the un-maintained roads, if the Town is willing to take on liability for maintained roads. Town Attorney Silvergleid advised the dirt roads would have to be maintained at a certain level. Deputy Town Manager Stueckle advised there is a significant difference between existing conditions on dirt roads and paved roads. All the actions on the maintained system are created through engineering studies of one form or another. If the non maintained roads are not approached in that same fashion the risk exposure is increased dramatically. Council Member Mayes questioned if PARSAC would provide coverage and if the Town was found to be liable would the cost of insurance go up, and what that cost would that be. Town Attorney Silvergleid advised that PARSAC has advised that if the road was burdened by an offer, it would be covered,, but as with any insurance, if there are more claims, the insurance premiums

would increase.

Mayor Neeb stated he likes Mr. Mendoza's idea for signs. Town Attorney Silvergleid advised that signs could be placed at the beginning of the non maintained roads stating that the roads are not maintained by the Town of Yucca Valley, and the property owners could put up cautionary signs.

Council Member Leone proposed that certain roads be surveyed for traffic and implied consent of dedication. He stated this is an issue of safety and the Town is short changing people, as far as safety and health reasons, for those on dirt roads. It is a matter of people getting their fair share for the taxes they are paying.

Council Member Mayes requested help forming a motion noting he does feel there are a few dirt roads in the community where speed limit signs could be put up after performing a survey, on a case by case basis. Town Manager Takata advised that he and Deputy Town Manager Stueckle have discussed the possibility of looking at some major arterials in the dirt road areas and bringing some of them into the maintained system that the Town could pave, however at this time Staff does not have answers as far as the cost to do that and can bring that issue back in the future. Council Member Mayes commented that maybe that could apply in some areas, if the Council had a policy in place where the Town would look at certain areas.

Council Member Luckino advised he likes the staff recommendation to look at the major arterials within the dirt road system, noting it would accomplish Council Member Mayes objective of not taking them all in, but at least looking at the main arterials. Town Attorney Silvergleid noted there would also be a set of standards for taking the major dirt arterials into the system. Town Manager Takata added there is always the possibility of assessment districts that residents could choose if they want.

Deputy Town Manager Stueckle stated that what staff has laid out this evening is a policy for Council to consider. Council Member Mayes stated as a Council Member he does not feel the Town can take on the liability for all of the dirt roads, but maybe it can take on some on a case by case basis.

Council Member Luckino moved staff's recommendation to look at the dirt roads that could be taken into the maintained system but remain as dirt roads. Council Member Mayes seconded. Motion carried 5-0 on a voice vote.

PUBLIC COMMENT

Bill Souder, Yucca Valley, advised of the Lighting Conference and Starry Nights Festival, and Sky's the Limit groundbreaking coming up at the end of month.

Charles McHenry, Yucca Valley, commented regarding the widening of Acoma Trail and the effect on home owners. Questioned what the Town will do to compensate those property owners for their lost property and landscaping.

Ramon Mendoza, Yucca Valley, commented regarding the need to get legislation to allow the Town to solve the dirt road issues.

Darril Becker, Yucca Mesa, commented regarding a request to have a street light placed west of Hilton across from the Arco station.

STAFF REPORTS AND COMMENTS

Town Manager Takata commended the Public Works crew for the wonderful job they did cleaning the streets after the last storm. Advised that the Home Depot opening will be on October 25th, and advised that staff did forward Council's request to carry lights that will comply with the Town's night sky ordinance.

Deputy Town Manager Stueckle commented regarding the road widening on Acoma, noting that the decision to widen Acoma was not made a few years ago with the subdivision approval, it was made over the course of a 3 ½ year period with the General Plan Advisory Committee. Identification of Acoma needing to be 4 lanes has existed since adoption of the general plan. There was either a preexisting easement or the current owner granted an easement. The two properties mentioned had pre-existing easements when the homes were built.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

10. Council Member Herbel

Applauded Council for taking the step to commission a work of art, noting it shows the Town is being progressive and looking at tourism as an economic engine. Thanked Mr. Mueller for attending the meeting and for the money he is putting into the project.

Thanked Bill Souder for putting together the Lighting Conference.

Reported regarding attendance at the League of California Cities Meeting in Sacramento, where much of the discussion centered on climate change. Requested that the Town look into a "green" building ordinance.

Thanked her mom and brother for attending the meeting.

11. Mayor Pro Tem Leone

Stated he was not happy with the results of speeds on dirt roads discussion tonight, and

read a portion of 1998 memorandum from the Town Attorney regarding dirt road maintenance, and a paragraph regarding implied common law dedication.

12. **Council Member Luckino**

Echoed Town Manager Takata's comments about the street crew and staff, and noted that both he and Deputy Town Manager Stueckle were on top of the situation assessing damage.

Commented regarding the importance of being proactive regarding the flooding issue.

Requested that staff reach out to Copper Mountain College and set up communications to see how the Town and College can work together as a partnership in response to Dr. Husing's comments regarding the small percentage of basin residents going on to college.

Reported regarding attendance at the League of California Cities Annual Conference in Sacramento along with Mayor Neeb, Council Member Mayes and Council Member Herbel. Noted that the Mayor was the voting representative. The workshops were all informative, and as always it was a good experience.

13. **Council Member Mayes**

Commended staff, noting the Town Manager was just saying what a blessing it is to work with the staff here. There is cohesiveness here with staff and the morale is very strong. Thanked them for all their hard work.

Reported that he had the honor of being able to meet and sit down with Attorney General Jerry Brown, while attending the League meeting last week. He was very interesting.

Suggested the Council look at the Development Code and a way to address citizens when they come before the Planning Department, to find a way to streamline the process and make it more user friendly.

Council Member Mayes requested that a meeting be set up with Caltrans in the near future.

14. **Mayor Neeb**

Commented the Public Art dedication is an important step forward, but is only one step of many. Stated that hopefully in the future when opportunities, such as the one discussed tonight, present themselves, there will be some kind of procedure to help the Council better facilitate acquiring art.

CLOSED SESSION

15. **CONFERENCE WITH LEGAL COUNCIL – ANTICIPATED LITIGATION**
Initiation of litigation pursuant to subdivision (c) of Section 54956.9(c) 1 potential case.

Town Attorney Silvergleid advised there is no need to hold a closed session on this matter at this time

16. **Closed Session pursuant to Government Code Section 54957, Public Employee Performance Evaluation (Town Manager)**

Mayor Neeb adjourned to closed session at 8:47 p.m. and returned to open session at 10:41 p.m. with no reportable action taken. There were no members of the public present.

ANNOUNCEMENTS

Next Town Council Meeting, Thursday, September 27, 2007, 6:00 p.m.

ADJOURNMENT

There being no further business, the meeting was adjourned at 10:41 p.m.

Respectfully submitted,

Jamie Anderson,
Town Clerk

TOWN COUNCIL STAFF REPORT

To:	Honorable Mayor & Town Council
From:	Joseph Glowitz, Director of Public Works/Town Engineer
Date:	July 25, 2007
For Council Meeting:	August 9, 2007
Subject:	Policy Discussion and Direction Posting Speed Signs on Private Dirt Roads

Prior Council Review: Town Council formal policy action on dirt roads was first addressed in November, 1993. Town Council policy was amended in 1994. In 2006, the Town modified prior San Bernardino County procedures for parcel and tract maps within dirt road neighborhoods, ensuring that public easements were dedicated with the creation of new roads with those subdivisions. While numerous other discussions and studies have taken place since 1994, no further policy amendments related to taking any actions on non-maintained dirt roads have been enacted since that time.

Recommendation: That the Town Council discusses and provides specific direction regarding the posting of speed signs on non-maintained, private dirt roads within the Town of Yucca Valley.

Executive Summary: Several Town Council members have inquired about the feasibility of posting regulatory speed signs on private, non-maintained dirt roads. Staff has provided a number of documents related to the dirt roads over the years to the Town Council and is requesting specific direction regarding regulatory speed sign posting on private, non-maintained roads.

There are several key issues, as previously identified, which must be evaluated as part of the consideration of taking actions on non-maintained roads. These include, and as discussed both later in this Staff Report, as well as in attachments to the Staff Report, the following.

* Trespass
* Gift of Public Funds
* Dominion & Control, Performing Maintenance on roads not in the Maintained System
* Increased Risk Exposure

Order of Procedure:

Request Staff Report
Request Public Comment

Reviewed By: Town Manager | Town Attorney | Mgmt Services | JAG Dept Head

X Department Report ___ Ordinance Action ___ Resolution Action ___ Public Hearing
___ Consent ___ Minute Action P.219 X Receive and File ___ Study Session

Council Discussion/Questions of Staff
Motion/Second
Discussion on Motion
Call the Question (Voice Vote)

Discussion: There are approximately 100 miles of unpaved, non-maintained roads within Yucca Valley's town limits. A significant portion of those unpaved, non-maintained dirt roads are private property, while many fewer of those non-maintained, dirt roads contain public easements. Since 1993, staff, independent consultants, and the Town Attorney have presented the Town Council with information and data regarding the obligations, liability issues, and standards the Town should consider when dealing with the different classification of dirt roads within the Town.

The following information provides a brief chronology of the information provided to the Town Council over the years.

Traffic Safety Policy No. 5 adopted in August 1993, set the standards and criteria for accepting roads in the Town Maintained System. The Policy was amended in 1994 but has not been amended since that time (Attachment A).

In 1998, a comprehensive, formal dirt road study was prepared by Willdan Associates, identifying the engineering aspects of road maintenance, evaluating level of service, costs and frequency of service, along with liability issues and various funding options available to the Town (Attachment C).

In February, 1998, the Town Attorney prepared a memo which provided information regarding the potential liability of the Town if it maintained roads not in the "accepted and maintained system"; the procedures by which the Town may obtain easements/right of ways over roads, and the process of acceptance of roads and streets for dedication and acceptance as part of the public road system. This memorandum also addressed the gift of public funds issue if the Town provided regular maintenance services on dirt roads which are privately owned. Subsequent memos in October, 1999 and March, 2000 discussed other aspects of dirt road maintenance and potential liability (Attachment B).

In 1999, a staff memo discussed the formation of a County Service Area for the purposes of forming a road maintenance district (Attachment D).

In 2000, Town Attorney, Naomi Silvergleid prepared a memo which discussed the requirements for formation of permanent road divisions, which had not been discussed in the 1998 Willdan study (Attachment E).

A fax from Senator Brulte's legislative staff provided input on this topic (Attachment F)

On May 22, 2000, PARSAC sent a letter that indicated their official position was that they

strongly recommended that the Town of Yucca Valley not enter into an agreement to maintain roads that are not owned by the Town. Additionally, two memos from Duane Gasaway to Brad Kilger (then Town Manager), discussed legal constraints, policy issues and limitations and a number of alternatives for maintenance of unimproved roads (Attachment G).

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Conversely, if the dirt road is within the Town's maintained system the Town has an obligation to maintain a reasonable safe roadway, so that the road does not constitute a dangerous condition of public property. Any liability would be determined under the principles of dangerous condition liability (Government Code Section 835).

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As illustrated by the brief chronology above, as well as the attachments to this Staff Report, the Town must be cautious in its consideration of taking actions on any road not within the Maintained System.

Evaluating the legal right to enter upon and perform maintenance efforts on those existing non-maintained roads (potential trespass issues), followed by evaluating the expenditure of public funds on private property (potential gift of public funds) are commonly the first steps in the evaluation in considering actions on any roads currently not in the maintained system.

Performing these types of activities on non-maintained roads creates increased risk exposure as the Town's complete immunity is eliminated. Additionally, implementing regular and on-going maintenance programs on non-maintained dirt roads may create the implied obligation of acceptance of that non-maintained dirt road into the Maintained System.

Finally, fiscal considerations must be evaluated throughout this process. The Town's revenues for roadway projects are limited, and any expansion of the maintained system and/or taking actions which increase the Town's risk exposure, all carry varying levels of fiscal impacts.

Alternatives: As identified through the years of research on this matter, Town Staff identified the use or formation of County Service Areas for road maintenance within the Town as the best tool that is available. Counties in California have authority for these

types of "districts", and this authority is not granted to incorporated cities. County Service Areas allow property owners to establish their desired level of service, and therefore those property owners can control costs incurred for dirt road maintenance.

As previously discussed, policy consideration should be given to planning for the future construction of paved, maintained roads, which constitute the current backbone roadway system in existing dirt road neighborhoods. This approach would provide paved access to general dirt road neighborhood areas, while the remaining "extended dirt road driveways" would be maintained by private property owners.

The Town Council may desire to evaluate taking selected dirt roads into the maintained system This would necessitate evaluating the existence of public easements, potential property/easement acquisition, construction activities to bring those dirt roads to an established minimum standard, and establishing a maintenance schedule/program for those roads.

Fiscal impacts and risk exposure should be carefully evaluated throughout this process and with all alternatives.

Fiscal impact: Vary depending on which alternative Town Council directs staff to pursue.

Attachments:

A	Traffic Safety Policy No. 5
B	1998 Memo from Town Attorney Naomi Silvergleid regarding dirt road maintenance
C	Dirt Road Maintenance Study by Willdan Associates
D	November 1998 Staff Report – County Service Areas Formation and Administration
E	Permanent Road Division discussion in a Memo from Town Attorney, Naomi Silvergleid, 2000.
F	2000 Fax from Senator Brulte's legislative staff
G	2000 Fax from PARSAC recommending that the Town not enter into agreements to maintain roads not owned by the Town.
H	Resolution 03-51: Enforcing the California Vehicle Code on Certain Privately owned and maintained roads.
I	California Vehicle Code Sections 22350 and 22352

INTER OFFICE MEMO

To: Honorable Mayor and Town Council

From: Capital Improvement Program Review Committee (James C. Winegardner, Administrative Services Director, Jim Schooler, Community Services Director, Shane R. Stueckle, Community Development Director, and Steve Drinovsky, Deputy Public Works Director)

Subject: Traffic Safety Policy #5
Acceptance of Dirt Road Into the Maintained System
Policy Discussion

Date: November 24, 1997

I. Background of Current Town Council Policy

As requested by the Town Council during preparation of the 1997/1998 FY budget, the Capital Improvement Program Review Committee prepared this Memo to assist the Town Council in discussing the current road maintenance policy and issues related to possible amendments to the policy.

As the Council is aware, dirt road maintenance was an issue discussed at great length following incorporation. Prior to the adoption of Council Policy, a significant amount of research was completed so that this issue could be thoroughly addressed. Some of the data contained in this Memo is historical information compiled for the previous Traffic Commission and Town Council in 1993/1994. Additional information has been compiled since that time, primarily in relation to the Town's pavement management system, on-going revenue projections, and on-going maintenance and rehabilitation costs estimates for paved roads within the Maintained System (System) at this time.

The Town Council adopted Traffic Safety Policy #5 in August, 1993, which established standards and criteria for determining when to accept additional roads into the System and established the type of roads that would be accepted. The Policy was amended by the Town Council in March, 1994, and no additional amendments or modifications have been made to the Policy since March 3, 1994.

The Policy established that prior to accepting a new roadway into the System, the property owner(s) is responsible for obtaining the legal right-of-way and for constructing the roadway to Town standards. In relation to construction, the Town standards, as adopted in the Standard Drawings and

Specifications, for a typical residential street includes the minimum of 26' in width and 3" thick asphalt concrete over adequate base material/compaction. Depending upon the actual location of the road, there may be additional requirements such as dikes, drainage improvements, etc., which correspond with the road improvements.

Please note that this standard is the minimum for establishing two travel lanes with a very narrow shoulder on each side of the road. Three inches of asphalt concrete is the minimum thickness typically considered for development of road to establish a 20 year life cycle.

II. General Overview

At the time of incorporation, there were approximately 134.87 miles of roadways within the County's Maintained Roadway System. The Town was obligated by State law to continue maintaining those roads in the County System at the time of incorporation. A copy of the County's official Maintained System list is attached to this staff report. Only one mile of dirt roadways was in the Maintained System at the time of incorporation. Since incorporation, the Town has added additional roadway segments into the System, primarily through the completion of major arterial projects such as Sunnyslope Drive, Paxton Road, Kickapoo Trail, Onaga Trail, Joshua Drive, etc., which consists of approximately 5.5 additional miles of roadways having been added to the System. No additional dirt roads, which have not been paved by the Town, have been added to the System since incorporation.

Based upon research completed in 1993/1994, it was estimated that there are approximately 170 miles of primary roadways within the Town of Yucca Valley, with an additional 60 to 80 miles of non-primary roadways, for a total of 230 to 250 miles of roadway. Approximately 140.5 miles of the overall total are paved (System roads) with some type of hard surface (hot mix asphalt, cold mix asphalt, desert mix asphalt, concrete pavement, etc). The remaining approximate 90 to 110 miles exist as dirt roads.

Legally, the Town must have right-of-way in order to maintain a dirt road. As the Council is well aware, there are numerous dirt roads through out the community that do not include dedication of right-of-way. Right-of-way acquisition alone is significant in terms of staff time and program costs in obtaining the necessary right-of-way. If property owners are not willing to grant easements to the Town, the costs of obtaining the easements (fair market value) can significantly reduce available funds for road maintenance and/or construction. Finally, in some situations, the use of eminent domain may be necessary.

In order for roads to be maintained by the Town, the roads must be accepted into the System. In order to be accepted into the System, the County generally required that all roadway right-of-way be dedicated and that the roadway be paved in conformance with minimum County requirements. The Town Council has continued with the same practice as the County since incorporation.

However, the County routinely allowed landowners to subdivide and develop land without the requirement of constructing paved streets. Dirt roads were graded with minimum disruption of the existing ground which in many instances resulted in a variety of standard design deficiencies such as improper drainage and inadequate sight distance. In many cases, these dirt roads were offered for dedication and in some cases were accepted by the County. The roads not accepted by the County were delegated to essentially a "private" status. With rare exception, the resulting dirt roads were not accepted into the County maintained system.

It is important to keep the above issues in mind when the Town Council is reviewing parcel/tract maps in the future. The Council has approved the subdivision of residential property into relatively large lots, and the developer was not required to improve the roads to Town standards. The private property owners are therefore responsible for the maintenance of those roadways. While the developer/owner may desire to construct the subdivision with dirt roads, and while the Town accepts no maintenance obligations with the dirt roads in the subdivisions, future owners may request that the Town assume full maintenance responsibilities for the roadways. Therefore approving new subdivisions with dirt roads is anticipated to lead towards additional future requests that the Town maintain dirt roads.

III. Fiscal & System Maintenance Overview:

The following information illustrates annual revenues received by the Town which are restricted to roadway improvements. Please note that these numbers do not reflect the exact amount received each year, but reflect the adopted revenue estimates for the 1997/1998 fiscal year. Finally, fund balance is not included because the funds have been appropriated by the Council in the current FY budget, and the funds will be obligated and/or expended by the end of the current fiscal year.

As of this date, approximately $4.5 million have been expended for roadway resurfacing and construction programs, while approximately $2.7 million have been expended in general street maintenance activities accomplished by the Street Maintenance Division. Because of the Council's heavy involvement in the Measure I capital planning, the Council is well aware that the revenues are not sufficient to adequately maintain those roads in the System at this time.

Revenue Source:	1997/1998 Projected Annual Revenue	Use Of Funds:
Gas Tax	$455,000.00	Annual Street Maintenance
Measure I 30%	$225,000.00	Reconstruction/Construction
Measure I 65%	$200,000.00	Reconstruction/Construction
LTF/SB 325	$90,000.00	Reconstruction/Construction
Total Revenue Received:	**$970,000.00**	

Gas Tax, Annual Street Maintenance Programs: Includes personnel costs, equipment purchases, pot hole patching, striping, sign installation and replacement, skin patching, shoulder maintenance, street sweeping, equipment and facility maintenance, supplies, facility costs, storm clean-up, etc. The costs are all associated with maintaining the approximate 145 miles in the Maintained System. It is important to note that without any new revenue infusion, the Gas Tax fund will be declining from the 1997/1998 FY budget of $588,866.00 (includes fund balance carry over) to approximately $390,000.00 in 1999/2000.

Measure I & SB 325 (LTF) Programs: Includes costs associated with resurfacing and reconstructing existing roadways, engineering, right-of-way acquisition, and also in limited circumstances, constructing new roadways, primarily in completing missing segments of the Town's backbone arterial system.

While $970,000.00 is a significant amount of revenue, that level of annual funding does not provide the Town the ability to adequately maintain paved roads currently in the System, as discussed later in this Memo. Additionally, the revenues for fiscal year 1997/1998 are not projected to continue at that level for any significant length of time, as indicated below.

For projection and discussion purposes, the CIP Review Committee estimates that all Local Transportation Fund (LTF/SB 325) revenues will be allocated to the MBTA by the year 1999/2000, as their service types and levels are expanded. Therefore, the Town cannot rely on the continued receipt of LTF revenues for either roadway paving projects or for dirt roadway maintenance programs. Imposition of the sales and use tax under Measure I was approved by the voters for a maximum of twenty years. Therefore, in the year 2009, Measure I revenues currently received by the Town will not longer exist, unless the Measure is successfully "reauthorized" by the County-wide voters at that time. This includes voters within each incorporated city/town in the County. In assuming a worst case scenario, yet reasonable as projections, the following revenue projections illustrate the Town's declining roadway improvement revenues. Again, it is projected that MBTA will

receive 100% of the LTF revenues in 1999/2000, and the Measure I revenue projections are based upon the lack of voter support for reauthorization of the Measure in FY 2008/2009. Finally, it is important to recall from the budget discussions that in the year 1999/2000, the Gas Tax revenues will be reduced by approximately $90,000.00 from their current levels. Therefore, even without adding dirt road maintenance efforts to the current programs, available revenues are declining.

Revenue Source:	1997/1998	1999/2000	2002/2003	2008/2009
Gas Tax	$455,000.00	$370,000.00	$370,000.00	$390,000.00
Measure I 30%	$225,000.00	$225,000.00	$225,000.00	$0.00
Measure I 65%	$200,000.00	$200,000.00	$200,000.00	$0.00
LTF/SB 325	$90,000.00	$0.00	$0.00	$0.00
Total Projected Revenue:	**$970,000.00**	**$795,000.00**	**$795,000.00**	**$390,000.00**

While the revenues for specific years are identified above, please refer to the graphs in the attachments for additional information related to annual projections to FY 2008/2009.

As illustrated through the above information, the Town's ongoing ability to maintain the current System will continue to be reduced annually. It is important to note that if the above scenario comes to fruition, and if no additional or new revenue sources are identified for roadway improvement programs, the Town **"will not have any financial resources"** to undertake annual reconstruction or paving programs beginning in 2009.

It is extremely important to "link" revenues not just with planned expenditures or available revenues, but to also link revenues with expenditures which are necessary to adequately maintain the current paved System. In terms of attempting to identify appropriate maintenance applications and associated costs, the Town recently completed the first phase of the Pavement Management System, which includes only those roads in the System at this time. A portion of the information in this section of the Memo is taken from the Pavement Management System report. This information is included in the discussion so that the Council is provided with information on costs relative to effectively maintaining existing paved roads in the Town's System.

The desired philosophy for effective pavement management is to identify the optimal rehabilitation point in the life-cycle of roadways and to identify the type of repair which is the most cost effective in extending the roads' life. The overall or primary goal within effective pavement management is to bring all pavement segments to the condition where preventative maintenance is the primary strategy to ensure the longevity of the roadway structure and surface.

A roadway life-cycle is typically viewed as a 20 year time period. During that 20 year period, there is an approximate 40% reduction in the quality of the road during the first 15 years. Following this time period, the deterioration of the roadway is accelerated, and the quality of the roadway decreases an additional 40% in the subsequent five years. Therefore, the most desirable trait of pavement management efforts is to identify roadways before the rapid deterioration is initiated so that preventive maintenance can be initiated.

For example, with adoption of the 1997/1998 Capital Projects Budgets, the cape seal projects undertaken this fall illustrate this pavement management philosophy. These rehabilitation efforts typically cost between 1/5 and 1/10 of complete reconstruction. In simple terms, streets that are properly maintained in a good to excellent condition result in total annual maintenance investment of four to five times less total costs than if the pavement is allowed to cycle through poor and failed conditions, which is then followed by rehabilitation.

Because the Town lacks sufficient revenue to adequately preserve the existing pavement within the System at this time, reallocation of revenues to dirt roadway maintenance will further decrease the Town's ability to adequately maintain the System as it exists today, as illustrated in the following table.

Preferred Paved Road Maintenance Program: 5 Year Capital Improvement Program:

Preferred Expenditures:	Available Revenue:
$11,932,594.00	$4,150,000.00
Revenue Shortfall:	**$7,782,594.00**

While the preferred expenditure level may appear relatively large, it is important to note that the replacement cost of the paved roads in the System is estimated at $143,076,800.00. Therefore, the preferred expenditure plan represents only approximately 8.34% of the total replacement costs of the system. Additionally, the available revenues provide the Town the ability to resurface/reconstruct less than 10% of the existing roadway System, and roadways that are not included in the program will continue to deteriorate. In terms of annual operations, the need for more Street Maintenance Division programs (pot hole patching, skin patches, etc.) will be increasing annually, while the Gas Tax revenues will be declining significantly from their current levels.

The above figures were generated through implementation of Phase I of the Town's Pavement Management System. In a 1997 field review by Engineering and Public Works staff, specific

standardized investigations documented that many of the existing roads are aged and distressed as a result of having not been properly maintained over their life cycles. From the 1997 field review, it appears that many of the streets within the Town limits are nearing the end of their design life. Their rate of deterioration can be expected to accelerate if left unattended.

Based upon street inspection and survey work completed over several years, the pavement condition data for approximately ten percent or more of the area of each street in the maintained system was inspected by Town staff. Following the inspections, the data is entered into the Town's software in order to achieve a Pavement Condition Index (PCI). The PCI is a measure of pavement distress with a rating scale from 1 to 100. Higher values indicate better conditions. The distress types measured were alligator cracking, block cracking, distortions, longitudinal and transverse cracking, patching and utility cut patching, rutting and depressions and weathering and raveling. **The road network mean PCI estimate for the Town of Yucca Valley is currently 61.** Unfortunately, general roadway conditions in the Town will continue to worsen over time based upon the lack of revenue to effectively maintain existing System roadways..

While it is certainly desirable to have the Town adequately maintain all of the roadways within its boundaries that meet specified threshold criteria (except state highways), it is becoming increasingly evident that budgetary considerations make this an impossible goal to reach. Recent adoption of the five and twenty year Measure I Plan and efforts toward completing implementation of the pavement management system recommendations have indicated that the costs of maintaining those roadways currently in the System will vastly exceed the projected available revenues. Complete or partial diversion of available Gas Tax or Measure I revenues from roadway capital improvement projects to dirt road maintenance projects would still result in a budgetary shortfall for maintenance, and at the expense of further deferring the on-going maintenance of paved roads that are in the System at this time.

IV. Dirt Road Maintenance

In 1993, and as a part of the process of establishing Traffic Safety Policy #5, staff conducted an informal survey of a number of desert cities regarding dirt road maintenance. The surveyed cities included Hesperia, Barstow, Adelanto, 29 Palms, Apple Valley, and the County of San Bernardino. Compared to the other agencies surveyed, the Town of Yucca Valley's road system has some unique characteristics. The six "classes" of roads that are found in the Town of Yucca Valley include the following.

1. Dirt road without dedicated R/W & with private maintenance.

2. Dirt road with dedicated R/W & with private maintenance.

3. Dirt road with dedicated R/W & with Town maintenance.

4. Paved road without dedicated R/W & with private maintenance.

5. Paved road with dedicated R/W with private maintenance.

6. Paved road with dedicated R/W & with Town maintenance.

With the exception of 29 Palms and the County, Yucca Valley appears to be unique in having dedicated roadways without the obligation to maintain. Most of the agencies held dedication of R/W to be synonymous with maintenance. They also agreed that acceptance and performance of maintenance carries the burden of liability.

Dirt road maintenance costs will vary based upon the type or "level" of maintenance provided. It is not unusual for maintenance of dirt roads to be delayed until rain storms have occurred. Rain fall assist in providing moisture in maintenance efforts in order to achieve some level or measure of compaction. Delaying maintenance to this level often subjects roads to extended periods of no maintenance, while waiting till the next rain. This can often lead to more extensive maintenance work when it is finally completed. If the Town elects to undertake the maintenance of dirt roads, a regular scheduled maintenance program at predetermined intervals would be recommended as follows.

* Initial Grading: Upon acceptance of dirt roads into the System, the Town should first undertake grading of the road section to establish appropriate cross-slope surface smoothness, drainage capacity, driveway connections, etc., in order to help minimize future maintenance costs.

* Maintenance Grading: Every six months (maximum time frame). Roads should be regraded using a motor grader and water truck as required to maintain initial grading conditions. Weather and traffic may require a deviation from the recommended six month interval.

* Maintenance Brushing: Approximately every six weeks, roads should be "brushed" by use

of a brushing drag. This technique has been used very successfully by the Shatin Heights Association. It combines the cost effectiveness of using more customary road drag without the usual gouging of the roadway. The brushing helps even out the washboard effect and redistributes the dirt, rather than just cutting the dirt away. For local roads without heavy traffic, the suggested frequency should be doubled to every twelve weeks, thereby reducing total maintenance costs.

Again, while private individuals or associations may be maintaining dirt roads at a different level or standard, it is recommended that if the Council elects to undertake dirt road maintenance, that the above described standards and programs be put into effect.

Additionally, the Town of Yucca Valley, as a public agency, will not be able to maintain the roads as inexpensively as if the home owners contracted directly for the maintenance functions.. While it is projected that the Town would "contract" for all aspects of dirt road maintenance, the Town would be obligated to pay prevailing wages. Additionally, contractor costs would be established to include equipment replacement, fuels, etc.

Based upon research conducted in 1993, costs for implementation of the dirt road maintenance program are estimated at $5,400.00 per mile in the first year, while second year costs "may" be reduced to approximately $3,000.00 per mile/per year. Using 90 miles of dirt roads as the basis for cost estimates, the following annual maintenances costs are provided.

Year One	Year Two
Maintenance Costs:	Maintenance Costs
.$486,000.00/90 miles	$270,000.00/90 miles

As illustrated previously in the discussion regarding maintenance of the existing System, reallocation of funds from the current maintenance and reconstruction programs into dirt road maintenance efforts will futher reduce the Town's ability to maintain the roads that are in the system today.

As discussed with the Council in preparation of the 1997/1998 FY budget, approximately $500,000.00 of LTF are not appropriated for any specific project. While the $500,000.00 may provide funding of one year of dirt road maintenance programs, as illustrated through the discussion on projected revenues and expenditures, in order for the Council to undertake dirt road maintenance programs, it will be necessary to allocate funds from existing programs, including funds from either the General Fund or from restricted road funds.

It is important to note that once the Town begins maintaining any roadway, the Town is obligated to continue maintaining that roadway. Therefore, while the Council may elect to allocate restricted road funds to dirt road maintenance at this time, if the revenue projections come to fruition in the future, the CIP Review Committee estimates that it will be necessary to fund dirt road maintenance costs from only the General Fund. Please refer to the graphs attached to this Memo.

The above costs do not take into consideration costs associated with a number of items including maintenance following storm events, both regulatory and warning signing, line of sight visibility evaluation, correction of original design deficiencies, widening of existing dirt roadways to adequate widths, traffic speed surveys in order to establish radar enforceable speed zones, etc. No cost estimate has been prepared for these issues as of this date, but costs associated with these items could easily approach, and possibly exceed, $100,000.00.

An additional area which requires careful consideration is that of liability. The Town is not currently liable for any situation (traffic accidents, etc.) on roads which are not in the System. When a road is added to the System, the Town becomes responsible to ensure the "traffic safety" of the motoring public. This includes conditions of the roadway, regulatory and warning signage, line of sight visibility issues, etc., just as through the road were paved and maintained by the Town. This is an extremely critical issues especially when considering the lack of design (current design deficiencies) engineering that was not included in the creation of the roadways. For the Council's reference, you may wish to compare the roadways within the Rancho Mesa Subdivision to other dirt roads in the community which were not constructed to any specific standards. While the Town can much more clearly address liability issues on roadways such as those in the Rancho Mesa Subdivision, liability issues are much more difficult to address where dirt roads were not built to a specified standard.

Another area where the Town would likely incur additional costs in maintaining dirt roads is that of utility locations. For example, many utility facilities may be located within the dirt roadways. Because of the lack of placing utilities according to accepted standards (x number of feet in depth, x feet from center line of roadway, x feet from curb face, etc.), the Town will encounter situations where utilities are damaged from maintenance equipment. The costs associated with repairing the utility facility is an additional cost the Town would incur. The most frequent situation that will be encountered is that of damage to Hi Desert Water District facilities. Again, the Town would be responsible for repair costs.

While there are significant costs associated with dirt road maintenance, there are also questions as to "which" dirt roadway should be selected for maintenance by the Town if the Council elects to

proceed with the maintenance program. First, a majority of the existing dirt roads within the Town limits are located on the north side of SR 62. The other area where there are a number of dirt roads is the south west portion of the community. This area would include Kickapoo, Mountain View, Highland, Hoopa, and several of the north/south streets which are located south of Navajo Trail (please see attached maps). Identification of criteria or thresholds can be extremely difficult, based upon the extensive number of dirt roads and the relatively minimum number of households which are served by specific dirt roadways.

As one possible criteria, staff evaluated the General Plan Circulation Element Map as one possible source or criteria to identify existing dirt roads which should be taken into the Maintained System. The reasoning for this approach was to identify roads which must be developed in the future in order to accommodate General Plan build out traffic volumes and patterns. In order to simplify the discussion, the Town is divided into the north and south one halves, with SR62 as the dividing line.

On the north side of the Town there is only one dirt roadway identified as necessary in the Circulation Element, and this is Sunnyslope Drive. No other roads are identified as being necessary to implement the General Plan Circulation Element on the north side of the Town.

On the south side of the Town, there are three areas in the Circulation Element Map which identify existing and non-existing roads which must be developed at some point in the future.

* Extension of Kickapoo southerly into Section 15, and thereafter connecting with Acoma Trail: It is important to note that this segment of the system is necessary only when and if Section 15 is developed.

* Extension of Sage southerly from La Cadena into Section 13, thereafter connecting with Warren Vista, which leads to Joshua Lane: It is important to note that this segment of the system is necessary only when and if Section 13 is developed.

* Extension of La Contenta south of Yucca Trail and also San Andreas extending from Palomar to La Contenta. Again, it is not anticipated that this roadway segment will be necessary until future development occurs in the area.

There are no additional roads identified in the General Plan which will be necessary to implement the Circulation Element, other than Onaga, between Kickapoo and Camino Del Cielo. This road was not discussed because of the extremely low use of the existing dirt roadway at this time and because funds

have been allocated to pave the road.

V. Summary and Alternatives

As illustrated throughout this report, the dirt road maintenance issue is not one that is easily resolved. The lack of requiring that roads be paved at the time of development by the County assisted greatly in creating the current conditions. Land developers and builders were able to reduce their costs of development, which were then passed onto home buyers through lower home prices, and the Town is now being requested to expend limited resources in these areas. The number or type of dirt roads to be maintained is not easily quantified or established, because balancing equitable criteria with limited financial resources is extremely difficult in this particular issue.

As illustrated within the discussion of available revenues and costs associated with on-going dirt road maintenance, accepting the responsibility to maintain dirt roads at this time will come at the expense of reducing the ability to maintain paved roads which are currently in the System, thereby further reducing the quality of the paved roads below that level that can be achieved with the projected revenues. Unfortunately, the Town does not have adequate revenue, in either the short or long term, to undertake dirt road maintenance programs without significant impact upon other programs and financial resources.

Assuming liability for traffic safety on the dirt roads is also a major consideration for the Council. The complete lack of design standards applied to the creation of the dirt roads has created numerous deficiencies in the areas of travel way width, drainage improvements, line-of-sight visibility, etc. Staff time allocated to legal issues and processes are anticipated to increase significantly if dirt road maintenance efforts are initiated by the Town.

In terms of receiving feedback on direction from the Council, the following alternatives are presented for discussion.

1. One available alterative is to assist in the formation of roadway maintenance or improvement districts. Property owners could dictate the level of maintenance that they prefer for their neighborhoods, and therefore the resulting costs that are associated with that level of service. The actual maintenance would be performed by private contractor for the participants in the district (neighborhood). The cost estimate for preparing the materials to form an improvement or maintenance district will be based upon the size or area of the district, the number of property owners included, and the engineering formula necessary for deriving

"benefit" calculations. In round figures, estimates of $10,000.00 to $20,000.00 are quite common. Again, actual costs cannot be identified until the area being served and the type or level of maintenance desired is determined.

II. A second alternative is to initiate a Town-wide assessment district for roadway maintenance. The district could consist of both paved and dirt road maintenance programs and associated costs.

III. If the Council determines that it desires to maintain dirt roads within existing revenues, the Council should identify those roadways, based upon specific criteria, which the Council feels should be maintained by the Town, including the possible use of identify key criteria/thresholds for identifying those dirt roads which should be maintained by the Town. The Council should then direct staff to evaluate annual/on-going maintenance costs, and to return to the Town Council at a future study session to discuss the information.

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TRAFFIC POLICY # 5

ACCEPTANCE OF ROADS INTO THE MAINTAINED SYSTEM

1. Prior to the Town's acceptance of roadways for maintenance, the Town shall require granting of right-of way and completion of improvements. These improvements must be in accordance with the minimum improvement level standards, including hot-mix asphalt concrete pavement (over appropriate sub-base material), appropriate drainage improvements and appropriate traffic control measures, as approved by the Town's Engineering Division. Determination of required paving structural sections (thickness) will be based upon development and approval of policies and procedures for establishing Traffic Indexes (as a measure of the anticipated traffic loading) and R-values (as a measure of the strength of the underlying soil).

2. When property owners request assistance, the Town will assist in the completion of the required improvements through formation of groups such as assessment districts, community service districts, etc.

3. For new developments, street construction and improvements shall be in conformance with the minimum standards outlined above, OR continuous, long-term private maintenance of roadways must be provided for through the establishment of a homeowners' association, community service district, or other similar method.

4. The Town may consider accepting designated major arterials, collectors and secondary streets, as identified in the General Plan Circulation Element, into the maintained system without the obligation that property owners construct the street to current standards.

Approved by TAC 7/26/93
Approved by Town Council 8/19/93
Amendment #1 approved by TAC on 2/28/94
Amendment #1 approved by Town Council 3/3/94

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FAX SENT

FAX MEMORANDUM

TO: Shane Stueckle, Community Development Director
Town of Yucca Valley

From: Naomi Silvergleid

Re: Aspects of Dirt Road Maintenance

Date: February 19, 1998

You have requested that I provide information to you regarding two issues: A) potential liability of Town if it maintains roads not in the "accepted and maintained" system; and B) the procedures by which the Town may obtain easements/right-of-ways over roads that are not in the Town's maintained system. In addition, I have recently sent you materials regarding purchase of easement/right-of-way and the eminent domain process. Please refer to that material.

A. 1. Upon incorporation of the Town (or upon annexation of territory in the future to the Town), all right, title, and interest of the County, including the underlying fee ownership (where owned by the county) in and to any County highway within the territory involved, which had been accepted into the County road system pursuant to Streets and Highways Code Section 941 thereupon vest in the Town and thereupon constitutes a Town street (Streets and Highways Code Section 989(a)(1)).

2. After roads and streets have been accepted for dedication and formally accepted as part of the public road system, the Town assumes the affirmative duty of maintenance. At that point, abutting property owners have a right of ingress and egress across dedicated streets, including the right to assume their access will be cared for. When property has become "public" by usage (under common law), it is unreasonable to impose a maintenance burden or liability for injuries until possession and control has been assumed by the Town.

3. Streets and Highways Code Section 1806 provides immunity for failure to maintain any road until and unless it has been accepted into the Town's street system by resolution of the Town Council.

4. If the Town elects to maintain or exercise control by means of either warning signs or regulatory signs on a street or highway offered for dedication (whether it has been formally accepted or not), or dedicated by implication, any maintenance activities will have possible liability exposure if the activity is done in a wrongful or negligent manner or creates a dangerous condition.

5. In addition to the liability exposure if the Town elects to perform maintenance work on private streets or roads, only limited circumstances (e.g., limited emergency repairs under proper circumstances) justify even considering such activity; the providing of regular maintenance services to such streets could constitute a gift of public funds.

6. If the Town desires to erect street name signs on private nonmaintained roads, an argument can be made that the street name signs are not predominantly for the benefit of the property owners but for the benefit of the general public and public safety departments. Accordingly, an argument could be made that this is not a gift of public funds. Street name signs are not technically regulatory or warning signs (although a creative personal injury attorney could most likely make an argument that they are), and so the Town would not literally be exercising control over those private nonmaintained roads.

Discussion and Analysis

(a) Although dedication of property to a Town or County is completed upon either a formal or informal acceptance by the public, this does not necessarily mean that the public is responsible for maintaining the property, or that the public is necessarily liable for injuries resulting from a dangerous or defective condition on that property. When the property is a street or highway, the Town or County is generally not responsible for the condition of the dedicated property unless there as been an acceptance by an official resolution adopted by the governing body or by a duly authorized officer which accepts the street into the Town or County roadway system for maintenance purposes. On the other hand, for other situations/kinds of properties, the Town is not responsible for maintenance or injury unless the Town has constructed the project as a public work or has in one form or another taken dominion and control over the project, such as performing repairs and maintenance (e.g., storm drain structures, as an example).

(b) In the case of an offer of dedication made by recording a subdivision map under the Map Act, mere acceptance of the map and the dedication offer contained on the map does not, by itself, necessarily impose a maintenance responsibility. Maintenance responsibility normally begins when the street has been accepted formally as part of the Town's road system (Streets and Highways Code Section 1806).

After a street has been accepted for dedication and formally accepted as part of the public road system, then the Town assumes the affirmative duty of maintenance, since the property owners abutting the street have a right of ingress and egress across the dedicated street, and a right to expect their access will be cared for. Failing to properly maintain such dedicated streets can result in liability for injuries occurring as a proximate result of a defective condition.

(c) Streets and Highways Code Sections 989, 57329, and 57385 recognize that upon incorporation or annexation of territory previously in a County to a Town, all roads or highways in that territory which had been accepted into the County road system under Streets and Highways Code Section 941 thereupon become Town streets, and vest in the Town as Town streets--to the extent of the County's prior interest therein--except for those streets which were not accepted into the County road system until after successful annexation or incorporation proceedings were commenced in the manner described in these statutes.

(d) Streets and Highways Code Section 1806 was added by the Legislature to nullify a California Supreme Court decision which imposed liability for a bridge collapse when the County only sent crews to repair a publicly used road, without any evidence even showing the road work occurred. That code section appears to give substantial immunity to the Town from the failure to maintain roads which have not been accepted into the street system either by formal action by the Town Council. However, Section 1806 does not immunize a City of Town from negligent maintenance. Any Town maintenance activity which arguably causes injury, imposes potential liability upon the Town; that risk may accelerate by the extent of such activity.

(e) Furthermore, maintenance or control of a dedicated but not accepted street shows Town dominion and control over the property. Although the immunity statutes described above appear to provide relatively broad protection, one court stated "this same 'control' that would constitute acceptance of a dedication would also bring the property within the definition of 'public property'" (which imposes liability on the Town for dangerous conditions on such property). Ackley v. City, etc. of San Francisco, 11 Cal. App. 3d 108, 113 (1970). Although this language was not directly relevant to the issues in that case, it illustrates some potential risks resulting from significant maintenance activities--which increase as the level and extent of maintenance accelerates.

Also when the Town performs substantial maintenance of a street not formally accepted into the Town's street system, in some cases this may result in a de facto obligation upon the City to continue to maintain the street. If dangerous condition liability threats were imposed upon the City for such roads, then ruts and chuckholes, etc., would be a constant invitation to file suit if damage resulted. The mere threat (whether or not justified) may force continued maintenance so these conditions would not occur.

(f) Also, regular maintenance of private streets not open to the public may well be a gift of public funds; before a private street can be accepted as public property, there must also be an offer of dedication in one form or another (i.e., direct or by operation of law). Generally, unless a public purpose is shown (e.g., valid statutory authorization), public funds may not be used to improve private property. Adequate police power needs should exist to justify its exercise--i.e., emergency, public safety, or other specific authorization.

If in certain instances it is determined that a need exists to provide certain services to non-maintained streets, the risks above discussed would be decreased if, e.g., services were limited to urgency situations--i.e., when streets are impassible to emergency vehicles, and the like; thus, where an immediate threat to health and safety exists, limited activity not occurring on a sustained, continuing basis under those circumstances would be more defensible.

B. Should the Town wish to acquire easement/right-of-ways over roads which are not currently in the Town's maintained system there are several ways to do so.

1. If there are existing offers of dedication on the property which have not been accepted, the Town by Resolution can accept the offers of dedication. Upon acceptance title to the dedicated property passes to the public and the public has the right to use the area for the designated public purposes but the Town is not required to maintain the road or systems until the roads have been formally accepted into the Town's maintained road system. If an offer of dedication has been recently rejected, the Town can rescind the previous rejection and accept the offer of dedication.

2. If the roads are not subject to a formal offer of dedication, it is possible to utilize the theory of implied common law dedication. This would occur if the roads were subject to consistent public use such that the owner(s) knew or should have known of the use of said lands. It is not necessary to have a formal acceptance of the common law dedication, but it is possible. At that point the resolution accepting the common law dedication should specifically state that it is found to be in the public interest to accept the common law dedication for public highway purposes, but that acceptance of the property into the Town maintained road system shall not occur except pursuant to further action by the Town Council determining that the property should become a part of the Town maintained system.

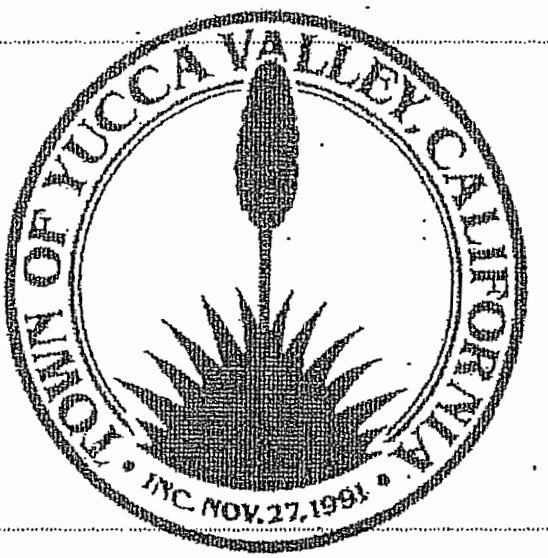
I have enclosed a recent case, Bess v. County of Humboldt, which holds that where there has been sufficient public use for a long period of time under the

belief that the road is a public road, without objection by the owner, and a public agency has maintained the road, there is sufficient evidence of an implied dedication without regard to the intention of the owner.

If you have any other questions or wish additional information, please so inform me.

WILLDAN STUDY
W/O APPENDIX

TOWN OF YUCCA VALLEY



DIRT ROAD MAINTENANCE STUDY

FEBRUARY 20, 1998

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APPENDIX

Town Traffic Policy No. 5
Typical Road Sections
Proposition 218 Notice and Assessment Ballot

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February 20, 1998

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

This study was prepared to provide an analysis of the Town's options for the maintenance of existing dirt roads with emphasis on liability, costs, level of service, and methods of financing.

To begin this study, it was necessary to first understand the nature of the Town's current maintenance standards and expectations with regards to the proposed maintenance of dirt roads within the Town's limits. With this information, along with informal discussions with the County, other agencies, and local grading contractors, we were able to compare current law requirements with local requirements to determine the standards expected, and necessary for proper maintenance. In addition, costs, liability issues, and levels of service used by these agencies were evaluated to get an understanding of how these issues should be addressed by the Town. By comparing these standards with current practices and applying them to various funding options, this study will help guide the Town of Yucca Valley in their effort to address the issue of dirt road maintenance.

The Town of Yucca Valley currently has approximately 100 miles of unpaved public and private roads within the Town's limits that are in need of repair or just some regular maintenance. Although the Town does have in place Traffic Policy No. 5 for accepting roads into the Town's maintenance system, only 1¼ mile of dirt road is currently included. The remaining dirt roads are therefore either not maintained or maintained only by the actions of individuals who live along the roads.

Throughout the area there are communities that have set standards for maintenance and established maintenance programs for both private and public roads. While some agencies do not maintain dirt roads, some agencies have established schedules and levels of service for maintenance. Agencies, such as the local Homeowners' Associations (HOA) and County Service Areas (CSAs) maintain their own road system with an annual maintenance schedule and associated costs that are passed on to the property owners within their tract. Many of these agencies have also left the liability on the grading contractor rather than on themselves.

This study begins with a brief description of the Town's road maintenance background, the Town of Yucca Valley's and neighboring community's standards, and the Town's expectations and standards for maintaining dirt roads. The study then goes on to explain the conditions at the site chosen for the analysis, levels of service available for maintenance, the frequency with which the services are needed and funding options, such as an assessment district, available to the Town for providing funding for the maintenance. Additional issues or concerns that the Town should consider if they decide on maintaining these roads, such as right-of-way and dust control, are also covered.

We have also included two matrices to assist in comparing the many issues involved with dirt road maintenance. The first matrix compares the level of service choices with the frequency and costs of the service. The second matrix covers the funding options available with key points about each option.

Overall, we concentrated on the engineering aspect of road maintenance with a concentration on the level of service, costs, and frequency of service. We also provided a strong background on various funding options available to the Town, and although we are not legal analysts, we included our understanding on the issue of liability as it relates to road maintenance.

It should be understood that the Town, were they to accept the roads into their maintenance system, will incur liability for standards of design, traffic control, drainage, and road safety issues, whether the roads are unpaved or paved.

As a result, this study outlines several aspects of the maintenance of dirt roads, including methods of funding. While the levels of service, frequencies and funding options are in order of magnitude and preference, this study does not give a recommendation for any particular level of service, funding option, or decision on prioritizing which roads in the Town should be maintained. This will be the Town Council's decision based on the information provided in this study.

TOWN OF YUCCA VALLEY
DIRT ROAD MAINTENANCE
LEVEL OF SERVICE

Level of Service Prevailing Wage Rates per Mile Costs, except as noted	Double Blading	Grading and Compacting	Maintenance Grading	Maintenance Brushing
Initial Grading Freq: Done one time Cost: Varies with service	$2,762 per mile	$2,422 per mile	$2,071 per mile	Not applicable; brushing not necessary
Monthly Service Freq: 12 times per year Cost: Varies with service	$1,023 per mile per event $12,276 per mile per year	$798 per mile per event $9,576 per mile per year	$681 per mile per event $8,172 per mile per year	$59 per mile per event $708 per mile per year
Bi-Monthly Service Freq: 6 times per year Cost: Varies with service	$1,023 per mile per event $6,138 per mile per year	$798 per mile per event $4,788 per mile per year	$681 per mile per event $4,086 per mile per year	$681 per mile per event $354 per mile per year
Semi-Annual Service Freq: 2 times per year Cost: Varies with service	$1,023 per mile per event $2,046 per mile per year	$798 per mile per event $1,596 per mile per year	$681 per mile per event $1,362 per mile per year	$59 per mile per event $108 per mile per year
Annual Service Freq: One per year Cost: Varies with service	$1,023 per mile per event $1,023 per mile per year	$798 per mile per event $798 per mile per year	$681 per mile per event $681 per mile per year	$59 per mile per event $59 per mile per year
Emergency Service Costs * Freq: As needed Cost: Varies with service	$31,700 per year, includes two events at 14 locations.	$31,700 per year, includes two events at 14 locations.	$31,700 per year, includes two events at 14 locations.	Not applicable.
As-Needed Service Costs Freq: As needed Cost: Varies with service	$1,023 per mile per event $2,046 for two times per year	$798 per mile per event $1,596 for two times per year	$681 per mile per event $1,362 for two times per year	$59 per mile per event $108 for two times per year

Note: Rates are for a typical 1-mile section of road.
For total costs for the sample area, multiply each cost by 11 miles of road as in the sample area identified by the Town.
The more frequent the maintenance grading, the less "emergency" and "as-needed" costs will be incurred. Since the maintenance grading will lessen the need for emergency and as-needed repairs.

* Total per year costs for repairing, debris removal, and emergency grading, typically twice a year.

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TOWN OF YUCCA VALLEY
FUNDING OPTIONS

Key Points	Option 1 Remain Status Quo	Option 2 Neighborhood Participation	Option 3 Home Owners Association	Option 4 Special Service Area	Option 5 Assessment District 1982 Act	Option 6 Town Funded
Formation Process	Not Applicable	Not Applicable	Initiated by property owners	Initiated By Town with joint consent of the County	Initiated by the Town	Not Applicable
Formation Costs	Not Applicable	Not Applicable	Processing fees of $900 for the HOA	Some admin. costs with the Town and some with the County	About $5,000 of Admin. costs	Not Applicable
Formation Timing	Not Applicable	Not Applicable	Approximately 6 months, depending on how quickly the homeowners can process information	3 to 4 Months including Council dates, and Board of Supervisors dates	3 to 4 Months time depending on the number of parcels included	Not Applicable
Noticing Requirements	Not Applicable	Not Applicable	Not Applicable	Done by County	Done by Town	Not Applicable
Voting Requirements	Not Applicable	Not Applicable	Not Applicable	~~Not Applicable~~ Prop 218	Prop 218	Not Applicable
Administrative Control	Town retains control	Not Applicable	HOA Board of Directors	By County	By Town	By Town
Liability	Town retains liability	Individual property owners	Remains with HOA/Contractor	By County/Contractor	By Town/Contractor	Town retains liability
Maintenance Control	Town retains control	No control	Controlled by the HOA	Controlled by the County	Controlled by the Town	Town retains control
Maintenance Costs	Funded by Town (existing services)	Individual property owners	Funded by property owners through property tax bills	County places fees on property tax bills	Town places assessment on property tax bills	Funded by Town

Note: Under Options 5, and 6, the roads will most likely need to be accepted by the Town for maintenance.

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February 20, 1998

PART I

OVERVIEW

PART I - OVERVIEW

PURPOSE

The Town of Yucca Valley has requested that a study be conducted to explore options available to the Town for the maintenance of existing dirt roads used for access by residents and property owners within the Town's limits. This study will provide an evaluation of these options with emphasis on the issues of liability, cost, and level of service.

BACKGROUND

The Town of Yucca Valley currently has approximately 90 to 110 miles of existing dirt roads within the Town's limits. These roads exhibit a wide range of conditions from fairly straight to meandering, level to inclined, and relatively smooth to deeply rutted. These roads are either within public rights-of-way or on private property.

Since incorporation, the maintenance of the dirt roads has been an issue with local residents. While there are two existing HOAs which maintain the roads within their developments, the majority of dirt roads within the Town's limits are maintained only when property owners contract out and pay for the services themselves. Currently, the Town maintains only about 1¾ miles of dirt roads within the Town limits.

APPROACH

In understanding and completing this study, we used a variety of approaches to collect and analyze data in achieving the study objectives. Current programs were evaluated and their practices applied to the Town's situation, while keeping the issues of liability, cost and level of service foremost in the analysis. This information was then compiled to provide several options available to the Town for the maintenance of these dirt roads. A summary of these methods is as follows:

- Agency Contact - Several agencies were contacted to determine their current maintenance standards, practices, alternatives, and issues encountered when maintaining dirt roads.
- Files - Existing files, and maps, were reviewed to provide necessary data that would relate to the maintenance options to be explored.
- Field Review - A visual check of a variety of existing dirt roads was completed to provide an understanding of the current situation faced by property owners and the local service industry.

This study does not identify particular portions of the Town or prioritizes which roads should be maintained. The study only details the maintenance costs and levels of service associated with a "typical" 1-mile section of road and funding options available to the Town.

A sample site location chosen by the Town's staff was used to represent typical conditions that might be encountered in our evaluation.

PART II

BACKGROUND

PART II - BACKGROUND

CURRENT MAINTENANCE PROGRAM

Prior to incorporation, the County Board of Supervisors is empowered by the California Streets and Highways Code (S&HC) to cause by proper order those highways which are necessary for public convenience to be established, recorded, constructed, and maintained. No public or private road could become a County highway until and unless the Board of Supervisors or its designee has caused the road to be accepted into the County road system. Upon incorporation of a city or town, or upon the annexation of territory to a town, all rights, title, and interest of the County, including the underlying fee where owned by the County, in and to any County highways within the territory involved, which has been accepted into the County road system shall vest in the town and shall thereupon constitute a town street. Even though these County highways become town streets, this fact does not require the town to improve the affected road or highway to town standards.

The Town of Yucca Valley currently has approximately 230 to 250 miles of roads of which about 140 are Town streets (part of the accepted Town system of public streets) and 90 to 110 miles are non-system streets (private roads within the Town's limits). At the time of incorporation, the County did not have rigid requirements for the improvement of the roads, particularly in rural and semi-rural areas. Under the County's administration, roads were routinely developed by individual landowners and were graded with very little disruption of the existing ground and with little consideration for good roadway design. This resulted in dirt roads that were created with a number of design flaws, such as improper or inadequate drainage, roads which did not follow predetermined paths or property lines, or roads which have significant sight distance problems. Many of these roads were not accepted for maintenance by the County and were delegated a "private" status.

Typically, prior to acceptance of a road for maintenance, the Town requires that the road be paved to specific standards and dedicated to the Town granting them the legal authority to maintain the roads. Currently, the Town of Yucca Valley has a mix of roads in various stages of dedication, including:

- Dirt roads without dedicated right-of-way and with private maintenance.
- Dirt roads with dedicated right-of-way and with private maintenance.
- Dirt roads with dedicated right-of-way and with Town maintenance.

Since incorporation, the maintenance of these dirt roads and funding for their maintenance has been an issue with local residents. While there is funding through the Gas Tax, Annual Street Maintenance and Measure I Programs, these funds are already set aside

to maintain part of the existing paved roadway system in the Town, and are barely sufficient for what is maintained.

At present, the Town maintains only 1¾ miles of dirt roads within the Town limits. These maintained roads are located at Little League Drive from Sage Avenue to Grand Avenue (which is scheduled to be paved the summer of 1998);Sierra Vista Drive from Avalon Avenue to Warren Vista Avenue; Hilton Court; Surrey Court; and Balsa Avenue between Sierra Vista Drive and Buena Vista Drive.

In addition, there are two existing HOAs which maintain the roads within their developments; the remaining dirt roads within the Town's limits are not maintained. These remaining miles of dirt roads are either maintained by the property owners on an individual basis or not maintained at all.

STATUTORY MAINTENANCE STANDARDS

The procedures for acceptance of Town streets is outlined in the Streets and Highways Code and states that no public or private street or road shall become a town street or road until and unless the town council, by resolution, has caused said street or road to be accepted into the town's street system, nor shall any town be held liable for failure to maintain any road unless and until it has been accepted into the town street system by resolution of the town council. It further states that the town council of any town shall have jurisdiction to prescribe the requirements for maintenance, including the maintenance of drainage, and of all streets within the town limits.

The provisions of State law indicated above result in the following observations:

- The Town Council has full authority to accept or not accept streets into its system for maintenance.
- It assumes no liability for roads not accepted into its road system.
- It may establish whatever maintenance standards it chooses for its accepted road system.
- Without an obligation to maintain streets which are not in its road system, funds expended for non-system roads would be a gift of public funds.
- Once the maintenance standards are established, they need to be consistently enforced and administered to retain their effectiveness.

TOWN ROAD MAINTENANCE STANDARDS

Currently, the Town of Yucca Valley has Traffic Safety Policy No. 5 (see Appendix), adopted by the Town Council in August 1993. This Policy establishes standards for determining when to accept roads into the Town's maintenance system and what type of roads will be accepted. Among other criteria in this policy is one that requires property owners to obtain legal right-of-way and construct the road to standards set by the Town, prior to acceptance.

ADJACENT CITIES' PRACTICES

In evaluating maintenance standards for the Town, we felt it was necessary to understand how other local agencies deal with the issue of dirt road maintenance. For this information we contacted several cities and county agencies, including Hesperia, Victorville, Barstow, 29 Palms, Apple Valley, and the County of San Bernardino. Of the Cities contacted, the majority only maintain dirt roads on an as needed and requested basis. These roads must also be dedicated and included in the City's and County's maintenance program before they will consider maintenance. San Bernardino County further referred us to their CSAs for maintenance standards which are described in greater detail below.

TYPICAL MAINTENANCE STANDARDS

After review of several agencies' maintenance standards, a typical standard for the maintenance of dirt roads is as follows:

Repair

Grading and repair of dirt roads shall be accomplished to facilitate safe travel, provide reasonable access to properties and maintain proper drainage. Grading may also be done to correct rutting, washboarding, debris accumulation and erosion problems.

The roadway may be graded in such a manner as to create a centerline crown, with no more than a plus or minus 2 percent grade fall from the centerline of the street to the flow-line at either edge of the roadway (see Appendix). In areas of abnormal flow, roadways may be graded in such a way as to allow flow to follow the centerline of the street, preventing edge erosion while still providing access to private property (see Appendix).

Roadway rebuilding may be required periodically to correct deep or continual rutting and washboarding. Scarification, windrowing of material for additional moisture application and re-compaction may be used as needed. Importation of miscellaneous fill material may be required, as well.

Frequency

Dirt road grading, under normal conditions, will typically be scheduled for a plus or minus two month rotation. Frequency may vary due to excessive traffic volume, storm damage, etc. There are also segments of dirt roads that may require less frequency maintenance due to a lesser application of the above stated conditions and should be graded accordingly. A typical grading crew's ability is to complete an average of 1.2 miles of dirt road per day.

The following is an example of the equipment and staffing necessary for the maintenance of dirt roads:

Equipment (Full Time)

For full-time maintenance the following equipment is typically required:

(1) Motor grader
(1) 4,000 gallon water truck
(1) ¾-ton pick-up truck
Traffic control devices
Water meter
Hand tools

Equipment (Part Time)

Equipment to be utilized in the event of maintenance due to storms or as needed:

(1) Motor grader
(1) Loader
(2) 7-yard dump truck
(1) ¾-ton pick-up truck

Staffing (Full Time)

(1) Equipment Operator
(1) Water Truck Driver/Maintenance Worker
(1) Maintenance Worker (traffic control)

Staffing (Part Time)

(1) Equipment Operator (grader)
(1) Equipment Operator (loader)
(2) Dump Truck Drivers
(1) Senior Maintenance Worker

Note: Emergency situations may create the need for additional equipment and staffing on a temporary basis.

EXISTING MAINTENANCE DISTRICTS

Within the Town's limits there are two HOAs and immediately outside of the Town's limits there are four CSAs. These areas were established to maintain the dirt roads within particular developments and to fund these services through assessments levied on the properties serviced. All of these districts rely on independent grading contractors to perform all of the grading work necessary.

The current contractor, used by many of these districts, is locally situated and carries their own liability insurance in the amount of one million dollars with an aggregate amount of two million dollars. With their own equipment, except for water trucks, this grading contractor contracts with the local special districts to maintain their dirt roads a minimum of four times a year with brushing done in between the grading to keep the roadway smooth. While each district contract is independent of the others, the service is generally the same with emergency calls done on an as needed basis. The goal of the contractor is to keep the roadways smooth and free of standing water to the satisfaction of the property owners.

Homeowners' Associations

Currently, there are two existing HOAs within the Town's limits: Shatin Heights HOA and Rancho Mesa Estates HOA. Both HOAs were established by their developer at the time they were created. These HOAs both contract out with a local grading contractor for the annual maintenance of the dirt roads within their developments.

Shatin Heights has 61 parcels of which only ten are developed and 2.6 miles of dirt roads. Maintenance consists of brushing the roads once every 6 weeks with blading done once every 3 months. All parcels pay the same rate of $84 per parcel per year for this service which includes administration, insurance, attorney fees and the grading contract. The grading contractor carries the liability insurance. This HOA bills the property owners for the grading on an annual basis with the ability of placing liens on the properties that do not pay, in the amount of approximately six times the original assessment. To date, there have been no liability issues or problems with the grading.

Rancho Mesa Heights has 121 lots of which 63 are developed and 5.5 miles of dirt roads generating about 150 vehicle trips per day. Maintenance consists of only two gradings per year, sometimes four, if necessary. All parcels pay the same amount of $100 per year, collected in two billings, with any delinquencies placed on the property as liens. The annual assessment covers all expenses related to the grading, including administration, insurance, and attorney fees. As in the Shatin HOA, Rancho Mesa Heights carries insurance but relies on their independent contractor to carry adequate liability insurance. To date there have been no liability issues or problems with the grading.

County Service Areas

Currently, there are four CSAs outside of the Town's limits formed by the County to maintain dirt roads within particular developments. These CSAs are independent legal entities with their own jurisdiction, budget, and district employees. Similar to the HOAs, the CSAs finance the road maintenance through the collection of service charges placed on the properties receiving the service. As in the HOAs, the CSAs also contract out for all their grading needs while relying on the contractor to carry whatever liability insurance is necessary. The CSAs will also grade on both private and public roads but only to the extent of smoothing out the washboarding and improving drainage. They will not attempt to straighten out or rebuild a road, unless asked to do so , and basically follow the direction a road is currently taking regardless of whether the road is in the proper alignment or not.

OTHER AGENCIES

Other agencies that were contacted, such as Caltrans and the Forest Service, do not maintain dirt roads within their jurisdiction. However, the Forest Service may grade a fire access road that has been made impassable for the purpose of their own access.

PART III

ROAD MAINTENANCE ANALYSIS

PART III - ROAD MAINTENANCE ANALYSIS

SAMPLE SITE LOCATION

For purposes of this study a sample of roads located in the northeast section of the Town was chosen as a typical example of the types of dirt roads in the Town. The area bounded by Buena Vista Drive on the north; Douglas Lane on the south; Avalon Avenue on the west; and Yucca Mesa Road on the east is approximately one square mile in size and contains approximately 11 miles of dirt roads. Other roads included in the site are: Forrest Drive; Meredith Road; Memory Lane; Ocotillo Drive; Oleander Drive; Los Coyotes Drive; Wilmar Avenue; El Dorado Avenue; Indio Avenue; Linda Lee Drive; Paradise View Road; Marvin Drive; Hermosa Court; Goleta Avenue; Fortuna Court; and Campero Drive.

For purposes of this study, all levels of service, costs, and additional information will be based on a per mile section of road.

FIELD OBSERVATIONS

After visiting the site and other dirt roads throughout the Town, the roads are in various conditions ranging from fairly straight to meandering around obstacles, level to inclined, and relatively smooth to deeply rutted. These roads also consist of both private and dedicated roads. Other conditions that were noticed that may be of concern to the Town were visible obstructions that shortened site distances, which is the reaction time necessary to stop a vehicle, creating unsafe conditions. Some cases of ponding of water in low spots was also noticed.

GENERAL LIABILITY

The current practice in the region is for both the funding agencies, such as a HOA or CSA, to carry liability insurance to cover the roads. In addition, the contractor who works on the road must carry their own insurance with the understanding that they are working on private roads and must assume all liability for incidents that occur as a result of their grading.

While we are not legal analysts, from an engineering perspective and experience with roadways, as long as the Town does not accept the roads into their maintenance system, they are not liable. Even if a program is established to maintain the roads, as long as they remain private, the liability rests with the property owner. Once the Town formally accepts the roads into their maintenance program, then they also assume the liability for the maintenance they perform.

For liability concerns associated with individual funding options, refer to the section on funding options. For liability issues as they relate to right-of-way concerns, see the section on right-of -way under Additional Issues.

INSURANCE

Current Town insurance should be adequate enough coverage, should the Town assume any road maintenance. Adequate insurance coverage should also be required to be carried by any contractor that contracts with the Town for grading.

PREVAILING WAGE

Often times during reports and discussions regarding the costs to provide City services, the comment is made that it should not cost that much to do whatever work is being proposed.

In actuality, maybe it should not cost that much, but it does in part because public agencies are required by State Law to include provisions for the payment of prevailing wage rates for any publicly bid contracts. For a number of years, prevailing wage rates have been identical to union labor rates. Union labor rates are typically higher than non-union rates. Therefore, publicly bid contracts will receive correspondingly higher bids than a non-prevailing wage contract.

Public works contracts for cities are governed by the Public Contracts Code being Division 2, Part 3, Chapter 1, Article 4, beginning with Section 20160. Public projects means, among other things, "street or sewer work except maintenance or repair." The Article further states when the expenditure required for a public project exceeds $5,000, it shall be contracted for and let to the lowest responsible bidder after notice. Division 2, Part 7, Chapter 1, Article 1 of the California Labor Code requires the payment of general prevailing wage rates for public works projects over $1,000, shall be paid to workers employed on public works, is not applicable to work carried out by a public agency with its own forces, and is applicable to contracts let for maintenance work.

Thus, the payment of prevailing wage rates is required for the Town's public contracts including maintenance work. However, if the Town used its own forces and equipment, presumably it could do the work for less because it does not need to pay prevailing wage rates for maintenance work by its own forces.

Another option is that of a Charter City. Case law has indicated that the payment of prevailing wage rates is not a state wide concern and charter cities may adopt their own wage rates which presumably would be less than the State's adopted rates. A charter city may include in the charter, which must be approved by the electorate, that it shall establish from time to time the prevailing wage rates to be paid on public projects.

As part of our analysis of prevailing wage rates, we made some informal inquires of contracting companies to determine the approximate difference between a prevailing wage project and a non-prevailing wage project which we were informed averages about 15 percent less for a non-prevailing wage project.

The Town may wish to explore either of these options, i.e., using their own forces and equipment to provide dirt road maintenance or become a charter city and establish lower prevailing wage rates. The cost to implement either of these options must be considered to determine if either would be cost effective when compared to simply using prevailing wage rates for public works projects. Costs for a road maintenance department, including equipment, are identified under Levels of Service Costs. Costs associated with forming a charter city are not included in this study.

LEVELS OF SERVICE

The following are descriptions of the various types of grading levels of service for grading that are used in the repair and up-keep of dirt roads. All descriptions refer to a 16-foot roadway section with 4-foot drainage swales on each side where needed, except as noted. These levels of service are not in order of preference or frequency. The decision of which level of service to use is determined by the amount of damage that is necessary to repair. Some circumstances may even require a combination of levels to be done at the same time.

Discussions on the levels of service, and costs were not directly compared to the funding options outlined later in this study. The various options available to the Town for funding are not contingent on the level of service or costs and are treated independently in this study.

For individual level of service costs, refer to the section on service frequency and costs.

Double Blading

Double blading represents a more involved grading operation which moves the road surface from one side to the other and back again. This operation would provide the best surface since it would eliminate any washboarding effect when it is completed. Six or more passes of the road grader would be necessary with this option. This service may be required two to four times per year, depending on the level of erosion.

Grading and Compacting

Grading and compacting is the grading of the native road surface with the use of a grader, water truck, and a compactive roller or rubber tire roller. The result would be a more firm road surface. This level of service may be required two to four times per year, depending on the level of erosion.

Maintenance Grading

Maintenance grading is the grading of the existing native road surface in place with minimal drainage grading. This level of service may be necessary more frequently than regular grading, possibly once every other month.

Maintenance Brushing

Maintenance brushing is the use of a wire brush assembly dragged behind a vehicle to minimize the washboard effect, however, this brushing would not eliminate all washboarding conditions. As with maintenance grading, this level of service is usually done more frequently to maintain a smooth driving surface.

Debris Removal

Debris removal is estimated to be needed on the average after each of two storms per year. This work would only make the road passable and is not intended as a repair.

Paving

The ultimate alternative to a dirt road would be a paved one. The design and installation of minimum pavement improvements would include a 26-foot minimum width of paving for fire department access, posted speed limits, stop signs as needed, and drainage culverts. Depending on the severity of the drainage crossings, a hydrology study may be necessary. Ongoing maintenance would also be required for paving in addition to street sweeping only when curb and gutter is installed. This category is the most costly based on the initial cost of improvements. Should right-of-way need to be obtained for this consideration, a minimum of 40-foot in width, would be required.

SERVICE FREQUENCY AND COSTS

Assumptions

Before typical costs can be quantified, a typical maintenance scenario will need to be described for each level of service. Additionally, certain assumptions on the amount of work would need to be made in order to provide a basis for cost estimating.

- While some existing roadways are one lane in width, the roadway width used as a basis for this study is 16 feet. This allows for two 8-foot lanes and allows for the passage of oncoming traffic without leaving the roadway. Longitudinal drainage swales will be established during the initial grading of the roadway. The swales would be 4 feet on either side of the 16-foot roadway.

- In the study sample area, there are approximately 41 intersections in the estimated 11 miles of roadway. Intersections would require a small amount of additional drainage grading to match the intersecting road drainage.

- Due to the variability in road conditions and slopes, it is estimated that each mile will average three low points which will require additional care in grading. Of the 33 estimated crossings, 14 are considered major drainage crossings which have the potential to make the road impassable during and after heavy rain fall. These fourteen areas would require debris removal or fill material in addition to grading in order to restore the storm damaged roadway.

- Actual grading of the roadway is expected to take place for 6.5 hours of a typical 8- hour day. It is estimated that the average speed of the grader is 2.5 miles per hour on a straight road. Meandering roads and intersections will reduce the mile per hour rate by an estimated 35 percent. It is estimated that three passes of the grader would be needed in order to blade the 24-foot section of road.

- Debris removal, done to damaged roadways at low drainage crossings, is estimated to happen three times per year. We expect the typical damage would be repaired in an average of 3 hours with the use of a front end loader and dump truck.

- Minor storm grading of the low points is estimated to be required five times per year. It is estimated that extra grading at these locations would require an extra 2 hours at each low point. Only a grader would be required for this work.

- Maintenance brushing or dragging, redistributing the gravel roadway, is estimated to be accomplished at an average rate of 3.5 miles per hour. This work could be done with a dump truck or similar equipment.

- Initial grading of the roadway would be necessary to establish the width and drainage swales of the roadway that would be the object of the maintenance.

- Culverts are not included in this analysis. The additions of culverts in areas of extreme need may be warranted and may reduce storm damage and thus maintenance repair after storms. Culvert costs would be the initial cost and the required maintenance. Of course, it is also possible that the storm, if severe enough, could wash out the installed culverts, thus creating the need for their replacement.

- Depending on the frequency of certain levels of service, some levels of service may not be needed as frequently. For example, if the roadway was to be graded and gravel placed down several times per year, blading and brushing would either not be necessary or may be needed very seldom.

Frequency of Service

The following is the frequency of service often used for maintaining dirt roads.

Initial Grading

The initial grading done on a road to bring it up to Town standards. This is usually done only one time.

Monthly Service

Service done on a monthly basis. This level of service is not necessary on all types of service. For example, placement of gravel on a roadway may only be needed once a year but brushing could be done on a monthly basis.

Bi-Monthly Service

Service done on an every other month basis. As with the monthly service level, this level of service is not necessary on all types of service. For example to gravel a roadway may only be needed once a year but brushing could be done on a monthly basis.

Semi-Annual Service

Service done on a twice a year basis. May not apply to all levels of service.

Annual Services

Service done on a once a year basis. May not apply to all levels of service.

Emergency Services

Service done on an emergency basis. This service level is dependent on the frequency and severity of storms and damage caused to the roads.

As-Needed Services

Service done on an as-needed basis. May not apply to all levels of service.

Levels of Service Costs

All costs quantified below are on a per mile, per event rate for a straight level roadway with no intersections or obstacles. For example, Double Blading a 1-mile section of road, one time is approximately $1,023. Refer to the matrices at the beginning of this study for comparisons.

These costs assume that administration would be by the Town with any necessary grading work to be contracted out. However, these costs do not include the actual costs of administration by Town staff and are strictly for the equipment and operators necessary. A typical in-house staff for administering road maintenance might consist of:

- One Part-time Supervisor
- One Part-time Director

Initial Grading

Grading necessary to bring an existing road up to standards which has not been maintained for some time is $2,762 per mile for double blading, $2,422 per mile for grading and compaction, and $2,071 per mile for maintenance grading.

Double Blading

Blading the native road surface one side to the other and back again. $1,023 per mile, per event.

Grading and Compacting

The costs for grading the roadway and using compacting equipment are $798 per mile, per event.

Maintenance Grading

The costs are the same for the "Grading and Compacting" category, except with no compaction. $681 per mile, per event.

Maintenance Brushing

No grading required and no material needed for the road base. $59 per mile, per event.

Emergency Costs

Debris removal after storms to make the road passable at 14 locations in the sample area. $31,700 per year for two storm events. This is not on a per mile basis as storm damage erosion is likely to occur at single locations where water erodes a road surface.

Typical Yearly Cost

A typical 1-mile section of dirt road for 1 year's worth of contracted maintenance might consist of the following:

- Initial grading done once only to establish a good road base.
- Double blade the road two to four times a year, depending on the erosion and rutting that occurs.
- Emergency repairs, grading, and debris removal two times per year.
- Brush the roadway once every 2 months or when necessary depending on the amount of traffic using the road.

Total Maintenance Costs	$10,876
Total Administrative Costs	$ 1,088
Total per Year Costs per Mile	$11,964

Multiple the above value by 11 miles to obtain an estimate of yearly costs for the sample area.

FUNDING OPTIONS

Should the Town decide that the maintenance of the dirt roads is necessary, there are several funding options that could be considered. Funding can basically come from only two sources, the Town or the citizens. If the funds are to be collected from the citizens, then a method to collect the necessary funds must be in place. Even then, due to the potentially large number of absentee property owners, collection of revenue may be a difficult task. If the funds are to come from the Town, then there must be a source of revenue for these funds, such as Gas Tax or Measure I funds, which are usually set aside for the improvement of paved roads within the Town.

Proposition 218, the Right to Vote on Taxes Act, should only impact the formation of any new assessment districts and CSAs by requiring a vote of the landowners on the proposed assessment. It is unclear (and still under interpretation) as to whether this proposition affects HOAs. If voting is necessary under Proposition 218, approval must be by a majority of the assessment ballots received weighted according to the proportional financial obligation of the properties in the district. A sample notice and ballot is included in the Appendix.

Special versus general benefit must also be evaluated for assessment districts in light of Proposition 218 when considering a new district. However, since the work is related to roads, the relation of special to general benefit is relatively easy. In subsequent years an assessment for road purposes could be considered exempt.

Seven possible options, for the funding of road maintenance, will be reviewed in this study. Each option will be evaluated for the formation process, costs, and timing required to enable each option. Noticing and voting requirements, administrative control, liability and responsibility for actual maintenance and associated costs will also be discussed as they pertain to each option. These options are arranged from the least pro-active approach by the Town, keeping the status quo to the most pro-active approach, funding the maintenance out of the Town's budget. It should be noted that only funding options that allow for the maintenance of dirt roads were evaluated.

Option 1 - Remain Status Quo

This option is to retain the status quo of not maintaining any additional dirt roads than that which is currently maintained. While this has no additional fiscal impact on the Town, or the property owners, there is still the concerns of the citizens about the maintenance of Town roads that would need to be addressed.

Formation Process None required.

Formation Costs None required.

Formation Timing	None required.
Noticing Requirements	None required.
Voting Requirements	None required.
Administrative Control	Town retains control (for existing dirt road maintenance).
Liability	Town retains liability (for existing dirt road maintenance).
Maintenance Control	Town retains control, only for existing services.
Maintenance Costs	Funded by the Town, only for existing services.

Option 2 - Neighborhood Participation

This option would basically be considered the voluntary compliance of property owners, fronting dirt roads, to pay for any costs associated with road maintenance. However, without a formal District or Association in place, there would not be any legal authority to enforce maintenance, collect funds, or to collect from those owners who do not pay. The results would be that only portions of roads would be maintained without any consistency.

Formation Process	None to the Town.
Formation Costs	None to the Town.
Formation Timing	None required.
Noticing Requirements	None required.
Voting Requirements	None required.
Administrative Control	None, as this is a voluntary program.
Liability	Would be on the individual owner, if the road is private.
Maintenance Control	There would be no standards or control.
Maintenance Costs	Would be on the individual owner, if the road is private.

Option 3 - Homeowners' Association (Recorded Road Maintenance Agreement)

A HOA is a legal and binding agreement among property owners, within a defined geographical location, to administer and pay for all costs associated with the maintenance of dirt roads, or other amenities. Normally, the association is given the power to levy assessments which, when recorded, becomes a lien on the individual lots. This is preferable but not completely necessary, however, since the most efficient method of collecting is by action in Small Claims Court. The lien becomes payable only if the owner offers to sell the lot and move away.

Formation Process

In order to form a HOA, property owners must establish an agreement among the present owners; to undertake the maintenance; to form the association to provide a framework for accomplishment of such maintenance; and to grant the association the powers necessary to carry out its obligations, including the power to levy and collect assessments to pay for the maintenance. This agreement normally takes the form of a Declaration of Covenants, Conditions, and Restrictions, which must be signed by all owners, notarized and recorded as a covenant running with the land. Additional issues with this agreement are:

- Any owner who does not sign would not be bound by the agreement.
- If the agreement is not recorded as a covenant running with the land, it would be binding upon the present owners, but it would not be binding on subsequent owners.
- Ideally, each holder of a mortgage or deed of trust on a lot should subordinate to the Declaration. If not, the lot would be released from the effect of Declaration by a foreclosure of the prior mortgage or deed of trust. Once all prior liens have been refinanced; this would no longer be a problem.

After the HOA is formed, normally as a mutual benefit non-profit corporation, it can be operated as an unincorporated association. However, this is not recommended. By using and strictly observing the corporate form of association, the individual owners would be much better insulated from personal liability arising from any actions or omissions of the association.

Formation of the corporation requires the following:

1. Preparation of Articles of Incorporation, which are then filed with the Secretary of State. The filing fee is around $846, but $800 of that is refunded when the association complies with Item No. 3, below. The Articles need to be signed only by the initial directors (usually three or five in number, depending on the size of the project).

2. Bylaws are then prepared and are signed by the initial directors. These provide the framework for the day to day operations of the Association. They are not filed anywhere (other than as noted in Item No. 3, below) but are retained in the minute book.

3. The Association should then apply for a tax identification number and should file for the special tax exempt status afforded non-profit corporations. This requires filing, in addition to the application itself, one copy each of the bylaws and the Association's pro forma budget for the ensuing year. If the State grants its exemption, the federal exemption follows automatically.

4. The Association should also procure a minute book and seal. The cost is in the $50 to $70 range.

Once Step Nos. 1 through 4 are completed:

5. The Association must file a notice of domestic, non-profit corporation with the Secretary of State annually. This is a simple, one page document, and the filing fee is about $5.

6. The Association is also required to file State and Federal tax returns. These are information returns, and no taxes are payable under normal circumstances.

7. The members of the Association should hold a meeting annually to elect directors and to take care of such business as shall be required. All directors can be elected annually, or their terms can be staggered, e.g., with five directors, three would be elected every other year and two would be elected the alternate years. This is generally established in the bylaws.

8. The Board of Directors generally has an organization meeting, usually to elect officers, within a few hours or days after the meeting of members and meets periodically (monthly or quarterly) thereafter.

Formation Costs None to the Town, about $900 to the HOA.

Formation Timing	Time varies depending on how quickly the process is completed.
Noticing Requirements	None by the Town. No actual noticing required by the HOA.
Voting Requirements	None by the Town. No actual vote required by the HOA.
Administrative Control	Board of Directors of the HOA.
Liability	None with the Town. Liability rests with the HOA.
Maintenance Control	Under control of the HOA.
Maintenance Costs	Funded exclusively by the HOA.

Option 4 - Special Service Area

A CSA is a process allowed by state law in which a County can provide for an additional alternative method for furnishing extended governmental services and to provide a process for the levy of taxes for these services. This is the method used by San Bernardino County, such as in CSAs currently located outside the Town's limits. While this is a County administered process, it is possible for the County to form such a service area within the Town following the approval by both the County Board of Supervisors and the Town Council for joint jurisdiction.

Following the approval of a joint resolution, the County could form a CSA for maintenance of dirt roads within the Town's limits. Currently, in the existing CSAs, the County contracts out with a local contractor for the maintenance of the dirt roads within certain tracts. The following are some factors relating to the current CSAs:

- Liability is the contractor's who must maintain adequate liability coverage, and also to the CSAs.
- Roads are private.
- Roads are not rebuilt or straightened out (if not in the correct location). Only maintenance grading on existing roads is performed to achieve a smooth driving surface, unless a higher level of service is desired.

Formation Process	Adoption of a joint resolution granting the County authority to operate a CSA within the Town. All remaining work will be with the County to form the CSA.

Formation Costs	CSA formation costs are covered by the County during the formation process with some costs for the initial resolution to be covered by the City. However, all formation costs could be recovered through the initial collection of fees.
Formation Timing	Standard formation time to allow for Town Council and Board of Supervisor meetings, resolutions and the public hearing. Approximately 4 to 6 months.
Noticing Requirements	Standard noticing for the public hearing is required
√ Voting Requirements	Subject to Prop 218.
Administrative Control	This would be under control of the County and the CSA.
Liability	The CSA would maintain insurance with any liability placed on the independent grading contractor
Maintenance Control	Under control of the CSA.
Maintenance Costs	Annual costs are collected by the CSA through property tax bills.

Option 5 - Assessment Districts

Assessment districts that can be used for the maintenance of dirt roads are limited to a very few choices. Either the Benefit Assessment Act of 1982 or under Section 1160 of the California Streets and Highways Code determining County road divisions. Under the Benefit Assessment Act of 1982, (1982 Act), a District can be formed to maintain dirt roads and collect annual assessment for such services. This type of assessment district would require the standard formation process of resolutions, an Engineer's Report, public hearing, and compliance with Proposition 218 for the Assessment Ballot process. Assessments could then be levied on property tax bills to collect revenue to fund all maintenance and administrative costs associated with the maintenance.

Once established, an 1982 Act district does not require a vote of the property owners unless the assessments are increased or additional property is added to the existing district. In addition, annual assessments can only be collected for the actual maintenance and administrative costs associated with the district for each fiscal year. If in subsequent years the expenditures are more and the assessments need to be raised, the Proposition 218 ballot procedure may need to be implemented.

The Section of the California Streets and Highways Code on County Road Divisions allows for a county to maintain roads and collect taxes sufficient to cover the expenses of the maintenance. However, this is a County process and may not be legally adaptable to the Town, and is not included here as an alternative but may be an option for future investigation..

The following formation process is for the 1982 Act District:

Formation Process	Standard Assessment District formation requiring a Resolution of Intention, Engineer's Report, Resolution approving the Report and setting the Public Hearing, Noticing of the public hearing and assessment ballot, public hearing, and resolution determining and levying the assessment. Assessments are then placed with the County Auditor/Controller in July for collection on property tax bills.
Formation Costs	Costs associated with the formation of an assessment District average about $5,000 with the largest cost determined by the number of ballots that will need to go out.
Formation Timing	To account for the timing of Town Council Meetings and the required time period for the public hearing and assessment balloting, about 3 to 4 months time is necessary with any assessments due to the County Auditor in July.
Noticing Requirements	Notice of the public hearing and assessment ballot are required 45 days prior to the public hearing.
Voting Requirements	A majority approval must be received with a majority of the assessment ballots received weighted according to the proportional financial obligation of the properties in the district. This vote is only held during the formation process and is not necessary afterwards unless the assessments are increased.
Administrative Control	Control of the district is by the Town.
Liability	Liability would be on the Town.
Maintenance Control	Control of the maintenance would be by the Town.

Maintenance Costs All maintenance and administrative costs could be collected annually on the property tax bills.

Schedule of Activities - Formation of an 1982 Act District

1. Determine the amount to collect for the upcoming fiscal year.
   - Determine the area of the improvement to be maintained.
   - Identify operation and maintenance budget amounts.
   - Identify administrative costs that may be assessed by the proposed district.
2. Establish the boundary of the proposed district and assessment for each parcel.
3. Prepare a petition to circulate among all property owners within the proposed district.
   - Petition would include the area in the proposed district along with their first year assessment amount.

Note: Should more than 50 percent but less than 100 percent sign the petition, continue with Step No. 4. Should less than 50 percent approve the petition, all proceedings should be suspended.

4. Prepare a resolution for accepting the petition and ordering an Engineer's Report describing the district.
5. Prepare an Engineer's Report for the proposed district for the upcoming fiscal year.
6. Prepare a resolution approving the report and setting the date for the public hearing.
7. Prepare a notice of the public hearing and assessment ballot to be mailed to all property owners within the proposed district.
8. At the public hearing, a majority approval exists if "YES" votes weighted according to the proportional financial obligation of the properties in the district are submitted.
9. At the public hearing, if more "NO" votes than "YES" votes are received, the district must be abandoned.

Highlights of a 1982 Act District

PROJECTS

• Facilities	Yes
• Services	Yes
• Operation/Maintenance	Yes

PROCEDURES

• Petition	Yes
• Vote Required	Yes
• Basis of Vote	Assessment Ballot 50 percent, weighted by financial obligation by land owner
• Report Required	Yes
• Public Meeting	No
• Public Hearing	Yes
• Basis of Tax/Assessment	Special benefit to property being assessed (except property value)
• Contribution	May be needed to offset general/special benefit
• Administrative Costs Recovered	Yes

<u>Option 6 - Town Funded</u>

This option would have the largest financial burden on the Town regardless of how many miles of dirt roads were to be maintained.

Formation Process	None
Formation Costs	None; only costs associated with actual maintenance and administration.
Formation Timing	None

Noticing Requirements	Possibly only when roads are to be worked on.
Voting Requirements	None
Administrative Control	Town
Liability	Liability would be on who ever is assuming responsibility for the maintenance of the roads
Maintenance Control	Under control of the Town
Maintenance Costs	Funded exclusively by the Town

PART IV

ADDITIONAL ISSUES / CONCERNS

PART IV - ADDITIONAL ISSUES/CONCERNS

ADDITIONAL ISSUES

Some additional issues and or concerns that need to be addressed when grading dirt roads are as follows:

Dust Control

The area in this sample is subject to the Mojave Desert Air Quality Management District (MDAQMD). This District implements the control measures of the Mojave Desert Planning Area Federal Attainment Plan. Two district rules govern the problem of dust control:

- Rule 403.2 - Fugitive dust control for the Mojave Desert Planning Area.
- Rule 402 - Nuisance.

Under Rule 403.2, the grading activity on dirt roads would apply to construction/demolition activity and heavily traveled, publicly maintained unpaved roads. Heavily traveled roads are defined as roads carrying more than 800 vehicle trips per day. The Rule requires sufficient stabilization of the heavily traveled portions of roads to reduce fugitive dust and wind erosion by a certain amount of tons per year of respirable particulate matter The method of stabilization is done by any one or a combination of paving, approved chemical treatments of the surface, watering, or compacting.

Construction/demolition activities include any on-site mechanical activity preparatory to or related to building, altering, rehabilitating, demolishing, or improving property that results in a disturbed earth surface. Activities included in this are grading, excavating, loading, crushing, cutting, planing, shaping, or ground breaking, but excluding MDAQMD permitted industrial operations. Use of periodic watering for short term stabilization of the disturbed surface is mandated by the District Rule. In addition, loaded haul vehicles shall be covered while operating on any roads. Non-essential earthmoving operations must also be reduced under high wind conditions defined as wind gusts greater than 25 miles per hour or, on an hourly average , when wind speed exceeds 15 miles per hour.

Should the Town disturb more then 100 acres or the equivalent of a 34.4 miles of 24-foot wide grading strip, the owner or operator of the construction/demolition source must prepare and submit a dust control plan to the MDAQMD prior to commencing earth moving activity.

Exemptions of the requirements of the Rule 403.2 apply to, among other things:

- Operations conducted during emergency situations or in conjunction with any officially declared disaster or state of emergency.

- Construction/demolition activities and/or weed abatement operations performed to maintain easements and/or roadways (including shoulders).

One interpretation of the Rules is that the definition of terms and the Rule's interpretation, may exempt activity, such as maintaining dirt roads. However, the additional Rule 402 applies to quantities of air contaminants which could cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public. Conversations with MDAQMD staff indicated that they have enforced this rule for dust control. Typically, when the agency gets many calls from the public, that there is a nuisance caused by dust, they will investigate the source of the nuisance and take action to have the source of the contaminants reduced.

For this study, we believe grading operations, whoever performs it, is subject to these rules and that dust control is in the best interest of the public. Specific activities subject to the Rules could be interpreted differently by the MDAQMD and the owner/operator.

To eliminate confusion and provide guidelines for dust control during maintenance activities, we suggest the following:

- Use a water truck during maintenance grading to reduce dust emissions unless the roads are already sufficiently wet.

- Grade during calm periods of the day. Do not grade the roads in periods of high winds unless the use of a water truck can keep the dust controlled to the point that it is not a nuisance.

- Use a cover over the loaded dirt hauling vehicles to reduce the possibility of dust emissions.

Utility Relocation

During initial grading of a road, all underground utilities should be visibly marked. The obvious dangers of exposure of any utility is evident. Care needs to be taken to check the depth of the utility periodically by potholing, in order to know the depth of the utility in question. The grading contractor should not cut too deeply into native ground as to expose these hazards.

Road Alignment

Alignment of the road becomes an issue when curves or natural objects, such as vegetation or large rocks cause the view of the driver to be obstructed from oncoming traffic or other road hazards. Curve and sight distance standards have been developed for safe road design. Non-compliance with minimum curve and sight distance standards increases the possibility of accidents, injuries and property damage. Sub-standard curves and sight distances tends to place liability on the owner and entity responsible for the maintenance of the road. Therefore, it is suggested that dirt roads be graded in compliance with minimum curve and sight distance standards to lessen the possibility of accidents and reduce the liability.

Right-of Way Issues

In discussions with agencies involved with dirt road maintenance, they all indicated they avoid doing any maintenance or work in non-dedicated roadway sections. The reasons for this vary:

- Maintenance of dedicated roads is the budgetary priority.
- Non-dedicated roads are considered private property.
- Concerns that once road maintenance by the agency commences, courts would rule that agencies are now accepting the roadway and the associated liability.

One city described a typical problem that concerns them. A piece of rural residential property was recently annexed to the city. The roads are non-paved, non-dedicated, and have not been accepted. The city expressed concern that if they know of an unsafe condition that could be solved by simple road maintenance and the city does not perform the corrective maintenance since the work is on private property, is the city still liable because the area is within existing city limits? On the one hand, the city has a responsibility to the public to address public safety issues. On the other hand, the road is not dedicated or accepted by the city and any maintenance work on the road may be construed by the courts and a jury as an acceptance of the road.

Section 1806 of the California Streets and Highways Code indicates that "....no city shall be held liable for failure to maintain any road until it has been accepted into the city street system...." Acceptance of the street must be made by resolution of the governing body, except when a city formally dedicates a road on city property, where no resolution of acceptance is necessary.

Even though this Section of the Code does address city liability of non-accepted roads, it does not address the issue of a city choosing to maintain a non-accepted road. In the absence of a specific instance where the courts have decreed that once a city maintains a non-accepted street, the city has then accepted it, the town will subject itself to a potential precedent setting court case by maintaining non-accepted streets. To avoid the

possibility of this liability, the Town of Yucca Valley should investigate the acceptance of the roads to be maintained. This would involve obtaining right-of-way from private property owners, bringing the dirt road up to specific engineered standards for drainage, minimum curve and site distance, to create a safe public road which is legally defensible from liability in a court of law. The Town should also consult their Town attorney experienced in such matters.

Environmental Concerns

Environmental concerns should not be an issue if grading is done on previously disturbed land, such as existing roads. Any grading done outside of these parameters on undisturbed land may require investigation into this issue and compliance with Town policies.

PUBLIC SAFETY CONCERNS

In addition to the above concerns, there should be consideration for service organizations that require access to property for reasons of public safety and information. The following services were contacted for their concerns with the current road conditions in the Town.

Postal Service

As a result of poor road conditions, the U.S. Postal Service is most concerned with the damage caused to their vehicles. The nature of the Postal Service also does not allow The option of halting or altering their services. They must continue to deliver mail regardless of the condition of the road. Other concerns of the Postal Service are that the roads are not wide enough for the letter carriers to get safely off of the road to deliver mail, speed limits are not enforced or are not posted making it a hazard if the carriers are partially in the roadway, standing water, and road washouts.

Police, Fire Suppression, and Emergency Services

These services encounter the same conditions as everyone else when using these roads. However, due to the emergency nature of these services, response time could be hampered by the lack of a well maintained roadway.

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February 20, 1998

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council
From: Shane R. Stueckle, Community Development Director
Date: October 30, 1998
For Council Meeting: November 5, 1998

Subject: County Service Area Formation and Administration

Recommendation: That the Town Council adopt Resolution No. 98-24 appropriating $15,000.00 from the SB325-Local Transit unappropriated reserve balance for county service area formation and administration projects.

Order of Procedure:

1. Request staff report.
2. Any Council questions of staff?
3. Request Public Comments (pro & con)
4. Council discussion.
5. Council action.(Voice Vote)

Policy Discussion: At the time of incorporation, the Town inherited the County's maintained road system. The maintained road system contained approximately 137 miles of maintained roadways at that time. The maintained road system has now increased to approximately 150 of maintained roadways.

The Town of Yucca Valley cannot maintain or expend public funds on roadways which are not in the maintained system. And as the Council and the staff discussed during the analysis of the requests for the Town to maintain dirt roadways, it is very apparent that the Town of Yucca Valley does not have the necessary financial resources to maintain dirt roads within the community.

Based upon these considerations the Town undertook an analysis of the alternatives for dirt road maintenance, and the Town Council directed staff to proceed with the possibility of working with the County of San Bernardino in the formation of County Service Areas for the purpose of dirt road maintenance.

Issues to Consider: Does the Council desire to proceed with the possible formation of County Service Areas for the purpose of dirt road maintenance?

Approved: _____ Finance _____ Department _____ Attorney _____ Town Mgr

X Department Report ___ Request of other Agency ___ Ordinance ___ Study Session

___ Consent ___ Presentation X Resolution ___ Public Hearing

Background and Analysis: Since the Council's direction to staff to proceed with the formation of County Service Areas for dirt road maintenance within the Town of Yucca Valley, Engineering staff have been working with Norm Granger, who has organized support for establishing a county service area for the maintenance of Bonita Trail. The initial applications have been filed by Mr. Granger with the County of San Bernardino. The County is currently in the process of confirming property ownership in relationship to the signed petition requesting that the service area be formed.

In the Town's discussion with County staff and Third District Supervisor Dennis Hansberger, the County supports the Town's effort in this area and will assist in any way possible with the formation of the County Service Areas. But because these service areas would be formed within the incorporated boundaries of the Town of Yucca Valley, the County indicated that the Town shall take a lead role in preparing all necessary analysis, documents, reports for formation of the service area. Additionally, the Town will take the lead role in working with neighborhood groups as the Town responds to neighborhood requests for formation of the service areas.

Based upon the Town's coordination with the County of San Bernardino, and the efforts of Mr. Granger, the process for forming a County Service Area for the Bonita Trail neighborhood is moving forward. As the Council will recall, the Town of Yucca Valley can participate financially in the formation of the CSAs through the payment of those application and administration fees charged by the County of San Bernardino. Therefore, in order to proceed with the formation of the CSA for Bonita Trail, the Town must appropriate funds for the project. None of these funds will be expended for actual maintenance.

Alternatives: Staff recommends no alternatives. If the council desires to proceed with the program, funds must be appropriated to pay the reserve costs.

Fiscal impact: The year end unappropriated fund balance for the SB325 Local Transit Fund is $226,606.00. Appropriating $15,000.00 from this fund results in a year end unappropriated fund balance of $211,606.00.

The fees charged by the County of San Bernardino for formation of the district are attached to this report. Additionally, the Town will incur costs for administering the formation process and annual monitoring of the program.

Previously reviewed by: Town Manager
Town Attorney
Administrative Services Director

Attachments: County application materials outlining fees and the process
Resolution No. 98-24

F:\COMMON\COMMON\STAFFREP\COSYCARE.WPD

RESOLUTION NO. 98-24

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, APPROPRIATING FUNDS FOR COUNTY SERVICE AREA FORMATION AND ADMINISTRATION

The Town Council of the Town of Yucca Valley, California resolves as follows:

1. Appropriate $15,000.00 from the SB325 Local Transit fund for account number 11700-00 30100 000-000 for County Service Area formation and administration.

PASSED, APPROVED, AND ADOPTED this 5 th day of November 1998.

MAYOR

ATTEST:

TOWN CLERK

P:\COMMON\COMMON\RESO\CUSVCARE.WPD

Singer & Silvergleid, Inc.
3880 Lemon Street, Ste. 420
Riverside, California 92501
(909) 784-3800
(909) 781-4083

Fax Transmittal

FAX NUMBER TRANSMITTED TO: 1-760-228-0084

To: Shane Stueckle

Of: Town of Yucca Valley

From: Naomi Silvergleid NS

Subject: Nonmaintained dirt roads

Date: March 9, 2000

Pages: 2

COMMENTS: This is a follow up memo to analyze pertinent legal issues involving permanent road divisions," an alternative available to the Town for dirt road maintenance. Permanent road divisions were not thoroughly explored in the Willdan analysis of February 2, 1998.

A city can create a permanent road division throughout the entire incorporated boundaries of Yucca Valley and then create smaller zones for each project. Streets and Highways Code sections 1160, et seq., which may be utilized by Yucca Valley (see Streets and Highways Code section 1813) are applicable to privately owned roads provided there has been a grant or a lease of a right of way to the Town for the Town's use. It is my understanding that the private roads under analysis are not burdened by either an offer of dedication or a grant or lease of right of way. This will be necessary before a permanent road division can be formed. If these rights of way cannot be acquired, permanent road divisions cannot be formed.

FAX SENT

In addition, there will be increased liability to the Town as a result of any work performed by or at the bequest of the Town. However, the roads will remain private roads and thus liability will be limited to work performed in a negligent manner or the failure to perform work. I would advise that you contact PARSAC to determine PARSAC's willingness to provide a defense to any claims or actions filed concerning permanent road divisions.

I understand that the owners of the private roads are not interested in the formation of County Service Areas because of the perceived "excess" administrative costs which would be charged by the County. However, any alternative other than the individual property owners performing the maintenance work would result in an overhead cost, whether it is the overhead of the contractor or the cost of administration in addition to the overhead of the contractor. Since the Town will subject itself to some measure of liability for work performed, this cost should be spread amongst those who benefit.

If you have other questions regarding this, please feel free to call.

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Neal

Susan:

Here's how I'd approach Yucca Valley's request.

First, public officials can't spend taxpayers' money on private streets because that would be a gift of public funds (Calif Constitution Article XVI, Section 6).

Then, a private street inside a city doesn't become a city street until the city council accepts the street (Streets & Highways Code Section 1806).

So, how can a city pay for improving streets? Certainly the city council can spend general fund dollars or gas tax revenues. (Apparently they don't want to do that or you wouldn't be asking...)

A city can create a "permanent road division" (Streets & Highways Code Section 1813). A permanent road division is a device that kind of like a special district, usually created by counties (Streets & Highways Code Section 1160, et seq.). A permanent road division can spend money on public streets AND it can spend money on privately owned roads IF the private property owners grant a 'permanent public easement' over their property (Streets & Highways Code Section 1160 (c)). That avoids the gift of public finds problem.

A permanent road division is easier to form than a County Service Area or other types of special districts. Why? First, they're exempt from LAFCO review (Government Code Section 56036 (a)(8)). Second, a county or a city can form a permanent road division that covers the whole county or the whole city and then create smaller "zones" for each road paving project. These zones don't have to be filed with the State Board of Equalization (Government Code Section 54906, added by SB 614, Morrow, 1999).

Where do permanent road divisions get the money to pave streets?

* Special taxes which require 2/3 voter approval (Streets & Highways Section 1178). Special taxes are also known as "parcel taxes" and each property owner pays the same flat amount regardless of the size of their lot.

* Parcel charges which are really benefit assessments and require the weighted-ballot procedures required by Proposition 218 (Streets & Highways Code Section 1179.5, see Government Code Section 54753 for the

procedures). Benefit assessments vary from property owner to property owner because they MUST be directly related to the benefit that each property owner gains.

* General obligation bonds which require 2/3 voter approval (Streets & Highways Code Section 1180). The bonds are paid off by an increase in property taxes, outside the usual 1% property tax rate set by Proposition 13. We call this an "extraordinary rate."

OK, if they don't like the idea of a permanent road division, here are a couple of alternatives:

* Mello-Roos Act allows a city to set up a community facilities district (not subject to LAFCO), and levy special taxes ("parcel taxes") with 2/3 voter approval. Mello-Roos taxes only pay for public works (Government Code Section 53313.5) and a few kinds of public services (Government Code Section 53313).

* Benefit assessments under the 1911 Act (Streets & Highways Code Section 5000, et seq.) or the 1913 Act (Streets & Highways Code Section 10000, et seq.). Of course, Proposition 218 requires a weighted-ballot review by the property owners (Government Code Section 53753).

So, in summary, I don't see the need for a bill. But if you want me to call city officials, please let me know.

Established 1986

PARSAC

PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA

William A. Sorrick, General Manager

May 22, 2000

RECEIVED

MAY 22 2000

COMMUNITY DEVELOPMENT

Mr. Duane Gasaway
Project Management
Community Development Department
Town of Yucca Valley
58928 Business Center Drive
Yucca Valley, CA 92284

RE: LIABILITY COVERAGE FOR CITY-MAINTAINED ROADS

Dear Mr. Gasaway:

Please excuse the delay to your letter of April 6, 2000 regarding the above. As discussed, we have been consumed with preparation for our Annual Meeting. In any event, you were interested in PARSAC's opinion regarding potential liability for maintaining privately-owned roads either under a County Service Area or as a Permanent Road Division.

The Council was concerned about whether accepting unimproved dirt roads that do not otherwise meet Town standards would negatively impact their liability coverage with PARSAC. The short answer is, "not immediately". The rates charged by PARSAC are set by the application of both an exposure base (payroll) and experience. If there is no immediate increase in payroll, the Town's rates would not go up in the first one or two years. However, if a run of adverse experience is started as a result of this new program, your rates would start to trend upward over a period of time. You also asked if PARSAC would recommend particular standards. Design standards should be such that any roads maintained under this type of an arrangement meet the minimum standards of town-owned roads.

The above would of course apply if the town decides to move forward. As our official position, ***PARSAC would strongly recommend that the Town of Yucca Valley not enter into an agreement to maintain roads that are not owned by the Town.*** The reason for this is a very basic tenant of risk management – do not accept responsibility over that which you do not own or control. In this case, neither test is met.

Thank you for giving us the opportunity to address this issue. Please do not hesitate to call if you have any questions or comments.

Very truly yours,

William A. Sorrick
General Manager

California Association of Joint Powers Authorities — Operated with Excellence

1525 Response Road, Suite 200
Sacramento, CA 95815

Facsimile (916) 927-3075 Phone (916) 927-3000
E-mail: parsac@inreach.com

RESOLUTION NO. 03-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YUCCA VALLEY, CALIFORNIA, ENFORCING THE CALIFORNIA VEHICLE CODE ON CERTAIN PRIVATELY OWNED AND MAINTAINED ROADS

WHEREAS, it is in the best interest of the public for the Town of Yucca Valley to enforce the California Vehicle Code on privately owned and maintained roads generally held open for use by the public for vehicular travel; and

WHEREAS, the Town Council set the date, time, and place of the public hearing to consider all public input regarding enforcement of the California Vehicle Code on certain privately owned and maintained roads involved; and

WHEREAS, written notice of the hearing was sent to the owners of all privately owned and maintained roads involved.

NOW, THEREFORE, be it resolved by the Town Council of the Town of Yucca Valley as follows:

Section 1: The Town Council of the Town of Yucca Valley finds and declares that there are privately owned and maintained roads within the Town of Yucca Valley that are generally held open for use by the public for vehicular travel and which so connect with the highways that the public cannot determine that the roads are not highways pursuant to Vehicle Code Section 21107.5.

Section 2: It is the intent of the Town Council of the Town of Yucca Valley for the California Vehicle Code to be enforced on these privately owned and maintained roads described in Exhibit "A" attached to this resolution and incorporated herewith.

Section 3: This Resolution shall not apply to any roads on which the owner has erected a notice of a size, shape, and color as to be readily legible during daylight hours from a distance of 100 feet to the effect that the road is privately owned and maintained and that it is not subject to public traffic regulations or control.

Section 4: The Clerk of the Town of Yucca Valley is hereby directed to cause to be recorded a certified copy of this resolution with the County Recorder of San Bernardino County.

APPROVED, ADOPTED AND EFFECTIVE this 6th day of November 2003

MAYOR

ATTEST:

TOWN CLERK

TOWN OF YUCCA VALLEY, CALIFORNIA
INC. NOV. 17, 1991
Town of
YUCCA VALLEY
Legend
Joshua Tree National Park

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

TOWN OF YUCCA VALLEY

I, Janet M. Anderson, Town Clerk of the Town of Yucca Valley, California do hereby certify that Resolution No. 03-51 was duly and regularly adopted by the Town Council of the Town of Yucca Valley, California, at a meeting thereof held on the 6th day of November, 2003, by the following vote:

AYES:	Council Members Cook, Leone, Mayes, and Neeb
NOES:	Mayor Earnest
ABSENT:	None
ABSTAIN:	None

TOWN CLERK

CALIFORNIA DEPARTMENT OF
MOTOR VEHICLES

Basic Speed Law

22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

Amended Ch. 252, Stats. 1963. Effective September 20, 1963.

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CALIFORNIA DEPARTMENT OF
MOTOR VEHICLES

Prima Facie Speed Limits

22352. (a) The prima facie limits are as follows and shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(1) Fifteen miles per hour:

(A) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along the railway. This subdivision does not apply in the case of any railway grade crossing where a human flagman is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(B) When traversing any intersection of highways if during the last 100 feet of the driver's approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all those highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(C) On any alley.

(2) Twenty-five miles per hour:

(A) On any highway other than a state highway, in any business or residence district unless a different speed is determined by local authority under procedures set forth in this code.

(B) When approaching or passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. The prima facie limit shall also apply when approaching or passing any school grounds which are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign. For purposes of this subparagraph, standard "SCHOOL" warning signs may be placed at any distance up to 500 feet away from school grounds.

(C) When passing a senior center or other facility primarily used by senior citizens, contiguous to a street other than a state highway and posted with a standard "SENIOR" warning sign. A local authority is not required to erect any sign pursuant to this paragraph until donations from private sources covering those costs are received and the local agency makes a determination that the proposed signing should be implemented. A local authority may, however, utilize any other funds available to it to pay for the erection of those signs.

(b) This section shall become operative on March 1, 2001.

Added Sec. 2, Ch. 421, Stats. 1997. Effective January 1, 1998.
Amended Sec. 2, Ch. 521, Stats. 2000. Effective January 1, 2001. Operative March 1, 2001.

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TOWN COUNCIL
STUDY SESSION

December 18, 2000
6:00 p.m.

Town Council Study Session, open to the public will be held at the YUCCA VALLEY COMMUNITY CENTER, Mesquite Room, 57090 29 Palms Highway, Yucca Valley, CA 92284, on Monday, December 18, 2000, 6:00 p.m.

DISCUSSION ITEMS

1-84 1. Code Enforcement policy discussion regarding barking dogs and inoperable vehicle abatement

85 2. Park & Ride Billboard Advertisement Campaign

86-88 3. Town Council Public Agency Board/Committee Liaison Appointments

89-113 4. Dirt Road Improvement Program Status Report

114-121 5. Dirt Road Street Sign Location Plan

122-129 6. 2001 Capital Projects Federal/State Grant Requests

7. Discussion regarding future Town Council meeting schedule
   - **Study Session**, Monday, January 1, 2001 - Cancel (holiday)
   - **Regular Town Council Meeting**, Thursday, January 4, 2001 - Cancel
   - **Study Session**, Monday, January 8, 2001
     $1 home purchases rehab program
   - **Study Session**, Monday, January 15, 2001 - Cancel (holiday)
   - **Regular Town Council Meeting**, Thursday, January 18, 2001
     RDA final audit and annual report
   - **Study Session**, Monday, January 22, 2001
     Design Guidelines
   - **Town Council Strategic Planning Session**, Thursday & Friday, January 25&26 or Friday & Saturday, January 26&27, 2001

8. Upcoming Informational Meetings
   - **Airport Master Plan Presentation** - Wednesday, January 10, 2001 6:00 p.m.

COMMUNITY INPUT

COUNCIL COMMENTS

RECOMMENDATIONS FOR FUTURE STUDY SESSION ITEMS

Park Master Plan Implementation
Unauthorized sales of cars on SR 62 by independent owners

NOTE: PLEASE BRING CALENDARS

\\YUCCA1\SYS\USERS\AJAMIE\STUDY\ss12182000.doc

Item #4

INTER

OFFICE

MEMO

To: Honorable Mayor & Town Council

From: Shane R. Stueckle, Deputy Town Manager

Subject: Dirt Road Maintenance Program
Possible Amendments to State Law
County Service Area Formation Status Report

Date: December 11, 2000

I. Background:

At the Town Council study session of September 20, 2000, the Town Council directed staff to proceed with the use of the County Service Area (CSA) tool for the Town's initial dirt road maintenance program. The Council also directed staff to begin evaluating what alternatives, including amendments to existing state law, or proposing new state legislation, would be necessary in order for the Town to perform this function on its own, without the use of the County CSA.

The formation process for the first Town CSA is proceeding at this time. Three specific areas have been identified as having the highest potential achieving the lowest possible costs. A map will be presented at the study session illustrating these areas. Planning and Engineering staff are in the process of mapping the specific roads, identifying property ownership, preparing preliminary costs estimates for CSA formation, annual maintenance, and administration in the three different areas. Staff is also identifying key stakeholders in each specific area that can function in the capacity as facilitator or neighborhood coordinator for the overall process. Initial meetings with the facilitators and possible participants will occur in January 2001.

In relationship to new legislation or in amending existing state law, the Council may desire to revisit the Permanent Road Division (PRD) discussion. Based upon further review by legal counsel, it appears that the Town would not be required to obtain any easements from the property owners, as long as the Town **does not spend any public funds** for the program. Therefore the PRD may be a feasible tool, as long as the Town is reimbursed for administration and implementation costs. But as previously discussed, the CSA provides a higher level of insulation (reduced risk) for the Town than the PRD.

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089

Singer & Silvergleid, Inc.
3880 Lemon Street, Suite 420
Riverside, California 92501
(909) 784-3800
(909) 781-4083

Fax Transmittal

FAX NUMBER TRANSMITTED TO:

To: Brad Kilger, Town Manager

Of: Town of Yucca Valley

From: Naomi Silvergleid, Town Attorney NS

Subject: Permanent road divisions

Date: December 12, 2000

Pages: 12

QUESTION: Enclosed is a follow up to our brief discussion regarding the possibility of permanent road divisions within the Town. For clarification, I have included certain sections of the Streets and Highways Code as follows:

1. Streets and Highways Code section 1813 (enclosed) provides for the utilization of permanent road divisions within cities. The section states that permanent road divisions are an alternative to any other provision of law that provides for the construction and maintenance of streets and references the permanent road division law commencing with section 1160.

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(909) 784-3800.

090

§ 1810. Acquisition of property in unincorporated area of county; connection or widening existing city streets; consent of county

A city may acquire, by purchase or eminent domain, property outside its boundaries in the unincorporated area of the county in which the city is located, if it is necessary to connect or widen the existing streets of the acquiring city and if the county consents to the acquisition.

The portion of the acquired property used to connect or widen a city street shall be deemed a city street for all purposes.

(Added by Stats.1979, c. 155, p. 351, § 1.)

§ 1812. Loop road financing, City of South Lake Tahoe

Notwithstanding any other provision of law, the City of South Lake Tahoe may complete construction of the loop road from city funds, including preparation of any necessary environmental impact reports and securing any necessary approval of the Tahoe Regional Planning Agency.

(Added by Stats.1982, c. 463, p. 1911, § 1.)

§ 1813. Permanent road divisions; law governing

(a) The provisions of Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 for the construction or maintenance of county roads may be utilized within any city for the construction and maintenance of city streets. For the purpose of construction or maintenance of city streets under this section, all references in that Article 3 to counties and their officers and to county funds, taxes, and service charges shall be deemed to be references to cities, city officers, and city funds, taxes, and service charges.

(b) The legislative body of any city may consent to the inclusion within a permanent road division formed by a county of streets within the corporate limits of the city, and the board of supervisors of the county in which the city is located shall then have jurisdiction over all proceedings taken or to be taken under that Article 3 in the same manner and to the same extent as if the city streets were county roads.

(c) This section is an alternative to any other provision of law that provides for the construction or maintenance of city streets.

(Added by Stats.1986, c. 780, § 3.)

Chapter 2

CITY STREETS AS PART OF THE STATE AND COUNTY HIGHWAY SYSTEMS

Section
1850. Authority to permit use as county road.
1851. Establishment of grade.
1852. Change of grade.

Section
1195. Posting of election notices.
1196. Publication of notices.
1197. Initial expenses of organizing division as county charge; recovery.

Cross References

City streets, application of this article, see § 1813.
County highway, defined, see § 25.
Highway taxes, see § 1550 et seq.
Railroad crossings, see Public Utilities Code § 1201 et seq.
Reconstruction or replacement of nondedicated roads, immunity of public entities or employees from liability, see Government Code § 831.3.
Width,
City streets, see § 1805.
County highways, see § 906.
State highways, see § 160.

Library References

Sovereign immunity study. Cal.Law Revision Comm. (1963) Vol. 5, p. 216.

§ 1160. Definitions

As used in this article:

(a) "Division" means permanent road division.

(b) "Last equalized assessment roll" means the last assessment roll made up by the county assessor, including the changes ordered by the board of supervisors sitting as a board of equalization.

(c) "Highway" means any county road or highway or any public roadway right of way or any private easement or roadway not accepted or acceptable into the county highway system but upon which a permanent public easement is offered or any privately owned road which meets the requirements of and in connection with which the necessary findings of Section 969.5 of this code can be made.

(Stats.1935, c. 29, p. 318, § 1160. Amended by Stats.1957, c. 981, p. 2221, § 1.)

Historical and Statutory Notes

Derivation: Pol.C. § 2746, added by Stats. 1907, c. 339, p. 635, § 1.

Cross References

Assessment roll, see Revenue and Taxation § 601 et seq.

Library References

Highways ⇐90.
WESTLAW Topic No. 200.
C.J.S. Highways § 144 et seq.
Words and Phrases (Perm.Ed.)

§ 1160.5. Short title

This article shall be known and may be cited as the Permanent Road Division Law.

(Added by Stats.1986, c. 578, § 4, eff. Aug. 26, 1986.)

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§ 1161. Formation; powers; cities

Any portion of a county, not already contained in a division, may be formed into a division under the provisions of this article. When formed, each division shall have the powers enumerated in this article. For the purpose of this article, a city is not a division, but may be included in a division.

(Stats.1935, c. 29, p. 918, § 1161.)

Historical and Statutory Notes

Derivation: Pol.C. § 2745, added by Stats. 1907, c. 339, p. 635, § 1, amended by Stats. 1917, c. 103, p. 144, § 1.

Library References

Highways ⇐90.
WESTLAW Topic No. 200.
C.J.S. Highways § 144 et seq.

Notes of Decisions

In general 1

1. In general

In levying, collecting and holding a tax for highway improvement under Pol.C. §§ 2745 to 2773 (repealed. See, now, § 1160 et seq.), as to permanent road divisions, county officials acted in their capacities as such, and not as ex officio officers of a corporate entity separate from the county; there being no provision that road divisions should have corporate existence and no necessity for implying such existence, the whole tenor of the act indicating that a road division was regarded merely as a territorial subdivision of the county for purpose of a county tax for road improvements in the district. Anaheim Sugar Co. v. Orange County (1919) 183 P. 809, 181 C. 212.

§ 1162. Petition for formation; contents

A petition for the formation of a division may be presented to the board of supervisors of the county wherein the division is proposed to be formed. The petition shall contain:

(a) The name of the proposed division.

(b) The signatures of at least a majority of the landowners within the proposed division or the signatures of owners of more than 50 percent of the assessed valuation within the division.

(c) The boundaries of the proposed division.

(d) The number of acres therein and the assessed valuation of such acreage according to the last equalized assessment roll of the county.

(e) The value of the improvements on real estate and of the personal property within the proposed division according to the last equalized assessment roll.

(f) The number of inhabitants therein, as nearly as can be ascertained.

(g) A particular description of the location of any highway which it is desired to construct, improve or permanently maintain or maintain for a specified number of years, in the event of which such limited period of

093

maintenance the period thereof shall be shown and a statement showing the necessity for such work.

(Stats.1935, c. 29, p. 319, § 1162. Amended by Stats.1957, c. 981, p. 2221, § 2; Stats.1959, c. 1308, p. 3580, § 1.)

Historical and Statutory Notes

Derivation: Pol.C. § 2746, added by Stats. 1907, c. 339, p. 635, § 1.

Cross References

Assessment roll, see Revenue and Taxation Code § 601 et seq.

Library References

Highways ⇐90, 107.
WESTLAW Topic No. 200.
C.J.S. Highways §§ 144 et seq., 192 et seq.

Notes of Decisions

Construction and application 1
Signatures 2

1. Construction and application

Under Pol.C. §§ 2745 to 2773 (repealed. See, now, § 1160 et seq.), as to permanent road divisions, presentation and publication of a sufficient petition prepared by landowners in proposed division, giving its boundaries, so that it might be determined therefrom what lands were included, was indispensable to hearing and action thereof by county board of supervisors. Anaheim Sugar Co. v. Orange County (1919) 183 P. 809, 181 C. 212.

Application to board of supervisors for establishment of road must state that road will be located within some portion of county in which application is made. Damrell v. Board of Sup'rs of San Joaquin County (1870) 40 C. 154.

2. Signatures

The question as to the genuineness of the signatures and the qualifications of the signers of the petition is one to be determined by the board, and as to this question the board acts judicially. People v. Delgado (1918) 175 P. 24, 37 C.A. 807.

§ 1163. Affidavit of valuations

Such petition shall be accompanied by an affidavit stating that affiant has compared the valuations given in the petition with those on the last equalized assessment roll and that such valuations are complete and correct. The affiant shall be a person over the age of 18 who is not a signatory to the petition and who owns no taxable property in the division.

(Stats.1935, c. 29, p. 319, § 1163.)

Code Commission Notes

Certain qualifications for the affiant are inserted since there is at present no qualification whatsoever expressly required of the one making the affidavit.

Historical and Statutory Notes

Derivation: Pol.C. § 2747, added by Stats. 1907, c. 339, p. 636, § 1.

Cross References

Assessment roll, see Revenue and Taxation Code § 601 et seq.

Historical and Statutory Notes

1991 Legislation

Section 5 of Stats.1991, c. 581 (S.B.1056), provides:

"It is the intent of the Legislature to abrogate the holding of the Court of Appeal in Rink v. City of Cupertino, 216 Cal.App. 3d 1382, to the extent that the holding would cause a road or highway which was part of a county road system to remain within the county road system after the territory in which the road or highway is situated becomes the territory of a city through annexation or incorporation proceedings. It is, and always has been, the intent of the Legislature that roads or highways which have been accepted into a county road system pursuant to Section 941 of the Streets and Highways Code, and which are situated in an area which is subsequently incorporated or annexed to a city, be included within the city street system upon that incorporation or annexation. Accordingly, Sections 1 to 4, inclusive, of this act are intended to clarify existing law without substantive change."

The Senate Daily Journal of Sept. 11, 1991 contained the following letter dated Sept. 11, 1991, from Senator Bergeson regarding the intent of S.B.1056 (Stats.1991, c. 581):

"Dear Rick: Yesterday the Senate concurred in the Assembly amendments to my Senate Bill 1056. To avoid any confusion over the Legislature's intentions in enacting SB 1056, I request that this letter be printed in the Senate Daily Journal.

"The Assembly amendments of August 20, 1991 deleted the proposed addition of a new Section 835.6 to the Government Code. That deletion should not be interpreted as an attempt by the Legislature to change the law on tort liability. As expressed in Section 5 of the bill, the intent of SB 1056 is to restore the annexation laws to their status before the *Rink* decision. Accordingly, the bill does not affect the current law on tort liability.

"I appreciate your cooperation in this matter."

Cross References

Acceptance of road or street by city governing body, see Streets and Highways Code § 1806.

Notes of Decisions

Rejected street 2
Validity 1

1. Validity

Statute vesting title to county highway in city upon city's incorporation, but not requiring city to improve affected road or highway to "city standards," was not unconstitutionally vague for failing to define what constituted "city standards." Re-Open Rambla, Inc. v. Board of Sup'rs (App. 2 Dist. 1996) 46 Cal.Rptr.2d 822, 39 Cal.App.4th 1499, rehearing denied, review denied.

2. Rejected street

County's right, title and interest in portion of closed road lying within boundaries of city vested in city upon its incorporation, although city had specifically rejected including road in its street system following incorporation. Re-Open Rambla, Inc. v. Board of Sup'rs (App. 2 Dist. 1995) 46 Cal.Rptr.2d 822, 39 Cal.App.4th 1499, rehearing denied, review denied.

Chapter 4

METHODS OF PERFORMING HIGHWAY WORK

Article 8

BY PERMANENT ROAD DIVISIONS

Section
1162.5. Resolution for formation; contents; notice; hearing; protest; election.

Section
1166. Determination on formation of division; boundary changes; notice of inclusion of new territory.

§ 1162.5. Resolution for formation; contents; notice; hearing; protest; election

(a) In lieu of submission of a petition pursuant to Section 1162, formation of a division may be initiated by a resolution of the board of supervisors. The resolution shall meet all the requirements of Section 1162 except those relating to signatures of landowners. In addition, the resolution shall fix a time and place for a public hearing on the establishment of the proposed division which shall not be less than 30 nor more than 60 days after the adoption of the resolution.

(b) The clerk of the board of supervisors shall publish a notice of the hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the county, or, if there is no newspaper published in the county, in a newspaper of general circulation which is circulated in the territory proposed to be included within the division. Publication shall be complete at least seven days prior to the date of the hearing. The notice shall contain the text of the resolution, the time and place for

the hearing, and a statement that at the hearing the testimony of all interested persons for or against the establishment of the division will be heard.

At least 20 days before the date set for the hearing, the clerk of the board of supervisors shall mail copies of the notice to all affected landowners whose names appear on the last equalized assessment roll.

(c) At the hearing, protests against the establishment of the division may be made orally or in writing by any interested person. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and clearly set forth the irregularities and defects to which objection is made. All written protests shall be filed with the clerk of the board of supervisors on or before the time fixed for the hearing and may be withdrawn in writing at any time before the conclusion of the hearing. The board may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings.

(d) If written protests are received from at least 25 percent but not more than 50 percent of the affected landowners, or landowners who would be required to pay any proposed special tax or parcel charge which represents more than 25 percent of the total amount of the expected revenue necessary to finance the division, and those protests are not withdrawn by the end of the hearing, the proposed division shall be submitted to the landowners for majority voter approval.

If written protests are received from 50 percent or more of the affected landowners, or landowners who would be required to pay any proposed special tax or parcel charge which represents more than 50 percent of the total amount of the expected revenue necessary to finance the division and those protests are not withdrawn by the end of the hearing, the proposed division shall be abandoned for at least one year.

(e) The board of supervisors may conduct, by mail, any election held to approve or disapprove a proposed division.

(f) If no election is required pursuant to subdivision (d), the division may be formed pursuant to Section 1166.

(g) If an election is required pursuant to subdivision (d), the board of supervisors may include on the same ballot the question of whether a special tax shall be levied within the division. The board of supervisors may submit the question of levy of a special tax to the voters separately from the question of formation of the division, or may consolidate both questions into a single measure. Sections 1172 to 1178, inclusive, are applicable to an election held pursuant to this subdivision.

(Added by Stats.1990, c. 70 (A.B.2358), § 1.)

§ 1165. Determination on formation of division; boundary changes; notice of inclusion of new territory

Following the hearing or election, as the case may be, the board shall decide if the proposed division is to be formed. If the board decides to form the division, it may make * * * changes in the boundaries as it finds proper and shall define and establish the boundaries. The changes shall not include any territory outside of the boundaries described in the petition or resolution unless the board has given at least 15 days' notice of its intention to include that territory in the division. The notice shall be given by publication, in the manner authorized by Section 1196, and by leaving a copy of the notice at each place of abode in the outside territory.

(Amended by Stats.1990, c. 70 (A.B.2358), § 2.)

§ 1175. Petition for special tax; election

Cross References

Elector, defined, see Elections Code § 321.

§ 1176. Conduct of election; form of proposition

Cross References

Form of ballots, see Elections Code § 13100 et seq.
Precinct boards, see Elections Code § 12300 et seq.

§ 969. Acquisition and reconstruction of roads between towns and villages

Whenever a road is of general utility and of public convenience and constitutes the only or principal means of communication between one town or village and another town or village in the same county, the board of supervisors may determine, by a two-thirds vote of its membership, that the public convenience and necessity demand the acquisition and reconstruction of such road. Thereafter, by a resolution passed by a two-thirds vote of its membership, the board may determine to, and after such determination may proceed to, acquire and reconstruct such road although it is not of the width required by Section 906. The board shall charge the expense of such acquisition and reconstruction to the county general fund, the road fund of the county, or the district fund of each district benefited, or to any two or more of such funds in such proportions as the board considers just and equitable.

(Stats.1935, c. 29, p. 308, § 969. Amended by Stats.1961, c. 801, p. 2063, § 4.)

Historical and Statutory Notes

Derivation: Pol.C. § 2620, added by Stats. 1883, c. 10, p. 6, § 1, amended by Stats.1923, c. 45, p. 80, § 1; Stats.1927, c. 635, p. 1066, § 1; Stats.1933, c. 8, p. 16, § 1; Stats.1935, c. 577, p. 1671, § 1.

Library References

Highways ⇐112, 113(1), (4), 118, 119.
WESTLAW Topic No. 200.
C.J.S. Highways §§ 201 to 211.

§ 969.5. Improvement and repair of private roads; rental of equipment to owner

Such boards may, after they have determined by a resolution adopted by a four-fifths vote of their membership that general county interest demands the improvement or repair of a privately owned road, improve or repair such road in consideration of the grant or lease of a right of way to the county for its own use or the use of the State, any political subdivision or other appropriate public agency for the public purposes specified in the resolution.

Such improvements or repairs shall be made and paid for in like manner as improvements or repairs of county highways.

By the same authorization the board may rent to the owner of land over which such a road has been open to the public for more than five years the machinery and equipment necessary to repair such road and the approaches thereto and any protecting embankments there may be, charging therefor by way of rental the cost of labor and other necessary expenses in addition to a reasonable allowance for depreciation of machinery.

Proceedings under this section shall not cause the road to become a county highway.

(Added by Stats.1941, c. 1255, p. 3201, § 1.)

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nor be denied such opportunity when their physical condition renders them unable to make use of the usual religious facilities of the community. Needless to say, invocation of the "free exercise" clause here does not confer any *right* to have such facilities made available. See *Abington, supra* at 299; *Katz, supra* at 429.

No hospital at present, so far as we know, forbids ministers from entering and saying prayers at patients' bedsides. To permit such use of hospital facilities for avowedly religious purposes is to realize the futility of analogizing the rigid rules set forth for the public schools. Once the appropriateness of religious services in hospitals is acknowledged, it seems difficult to distinguish between bedside services and similar prayer and meditation in separate quarters set aside for ambulatory patients and visitors. The plan as set forth does not contemplate substantial expenditures by the county. It would appear that public participation in the project would be limited to making space available and assuming maintenance expense for such space. We cannot hold such "aid" to be unconstitutional.

As Justice Reed stated for the majority in the *McCollum* case, "The prohibition of enactments respecting the establishment of religion does not bar every friendly gesture between church and state. It is not an absolute prohibition against every conceivable situation where the two may work together, ..." 333 U.S. at 255-256.

Even more pointed is Professor Sutherland's comment:

> "Where people here or there have some custom that pleases them—maintenance of a chapel on the grounds of a poorhouse, or provision of lay books for parochial children, or some similar small subvention that really has little resemblance to the Schenectady massacre of 1690, or comparable causes of the bitter hostilities that startle the reader of seventeenth century colonial statutes—wisdom might suggest, even to the zealous in these matters, that the practice is better let rest." Sutherland, *Due Process and Disestablishment*, 62 Harv. L. Rev. 1306, 1317-1318 (1949).

Opinion No. 64-319—April 27, 1965

SUBJECT: COUNTY ROADS—County may spend public money from certain sources on improvement, maintenance, and repair of private roads, and public roads not within county road system, under certain circumstances.

Requested by: DISTRICT ATTORNEY and COUNTY COUNSEL, NEVADA COUNTY

Opinion by: THOMAS C. LYNCH, Attorney General
George J. Shelby, Deputy

The Honorable Harold A. Berliner, District Attorney of Nevada County and the Honorable Dean G. Lawrence, County Counsel of Nevada County, have requested an opinion on the following questions:

3. May a county spend public money to improve, maintain, or repair any of the following types of roads located in the county:

a. Private roads?

b. Public roads not within the "county road" system?

2. If public money may be so spent, which of the different sources of county funds may be charged for the expenses?

3. Does the deposit of various moneys into a centralized "road fund" cause them to lose any previous statutory restrictions controlling their use?

The conclusions are:

1. A county may use public money to improve or repair a privately owned road only if the provisions of Streets and Highways Code section 1805 are followed, public money deposited in the county road fund may not be spent on public roads unless they are within the system of "county roads", and public roads which are not "county roads" may, under certain circumstances, be maintained with Motor Vehicle License Fee Funds and with certain local tax funds.

2. The county "road fund" may be charged for authorized private road expenditures and Motor Vehicle License Fee funds and certain local tax funds may be charged with expenditures upon public roads not within the county road system.

3. When various moneys are deposited into a centralized road fund they retain any prior statutory restrictions upon their use.

ANALYSIS

I. PRIVATE ROADS

The law has always been clear that the improvement of private roads cannot be done by counties in the absence of statutory authorization. (4 Ops. Cal. Atty. Gen. 112, 113 (1944); 7 Ops. Cal. Atty. Gen. 173 (1946); 9 Ops. Cal. Atty. Gen. 79, 214 (1947).) In fact the expenditure of public money for private purposes is a gift of public money in violation of article IV, section 31, of the California Constitution.

Section 1805[1] of the Streets and Highways Code[1] provides the only statutory authority for the expenditure of public money on private roads. That section reads:

> "Such boards [of county supervisors] may, after they have determined by a resolution adopted by a four-fifths vote of their membership that general or any interest demands the improvement or repair of a privately owned road, improve or repair such road in consideration of the grant or lease of a right of way to the county for its own use or the use of the State, any political subdivision or other appropriate public agency for the public purposes specified in the resolution.
>
> "Such improvements or repairs shall be made and paid for in like manner as improvements or repairs of county highways.

[1] All section references are to the Streets and Highways Code unless otherwise specified.

"By the same authorization the board may rent to the owner of land over which such a road has been open to the public for more than five years the machinery and equipment necessary to repair such road and the approaches thereto and any protecting embankments there may be, charging therefor by way of rental the cost of labor and other necessary expenses in addition to a reasonable allowance for depreciation of machinery.

"Proceedings under this section shall not cause the road to become a county highway."

The intent of the Legislature in enacting section 969.5 was to authorize work on roads not accepted by the county into the county road system under two different sets of circumstances—first, in lieu of payment for rights-of-way and, secondly, when the property owner pays the cost of improvement. 4 Ops. Cal. Atty. Gen. 112 (1944). It is our conclusion, therefore, that the provisions of section 969.5 must be followed if public money of a county is to be expended for repair or improvement of a private road.

II. THE COUNTY ROAD FUND

"Private" roads over which the public has a right to travel, whether express or prescriptive, are "public" roads. *McKinney* v. *Ruderman*, 203 Cal. App. 2d 109 (1962). But "public" roads are not "county" roads, as defined in section 25, until they are accepted as such by appropriate resolution of the board of supervisors. §§ 904, 941, 977, 1070; *People* v. *LaVista Cemetery Ass'n*, 175 Cal. App. 2d 197, 202 (1959). Implied acceptance into the county road system by exercise of control over a public road by the county as set forth in *Union Transp. Co.* v. *Sacramento County*, 42 Cal. 2d 235 (1954), is no longer possible as the 1955 amendment to section 941 made the board of supervisors' resolution the exclusive method for creating "county" roads. The "viewer method" which was another way for a road to become a "county" road was repealed in 1961. §§ 1100-1133, repealed by Stats. 1961, ch. 1354, § 1, p. 3133.

The question, then, is whether or not public money of the county can be used to maintain or repair "public" roads which are not "county" roads. The Streets and Highways Code restricts the use of funds in the county "road fund" to "county roads" and "other street and highway purposes as provided by law" (§ 2150). The law provides for such other uses as private roads in section 969.5, city streets in sections 1680 and 1683, and others, but the law does not provide for general maintenance expenditures to be made from the "road fund" upon public roads not in the county road system. The general rule seems to be that if the convenience of the public requires work to be done by a county at general public expense on a public road, it should be adopted as a county road and thereafter maintained as such. 4 Ops. Cal. Atty. Gen. 112, 114 (1944); 7 Ops. Cal. Atty. Gen. 174 (1946); 9 Ops. Cal. Atty. Gen. 214 (1947).

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MEMORANDUM
VIA TELEFAX (6 PAGES TOTAL)

TO: Brad Kilger
Town Manager
Town of Yucca Valley

FROM: Naomi Silvergleid
Town Attorney

RE: Certain aspects of dirt road maintenance

DATE: December 4, 2000

As we are aware, the subject of maintenance of privately held dirt roads within the Town of Yucca Valley is of continuing concern. Some of these dirt roads are used by the general motoring public. It is my understanding that the Town is desirous of receiving grant funds so that these roads may be brought up to Town standards and taken into the maintained system.

However, other roads are not major arterials and most likely will remain private. There is a desire by the Town Council to participate in some manner in the maintenance of these private roads. Alternatives have been discussed ranging from financial participation in the administration charges of the County of San Bernardino for administering County service areas to legislative action to expand County services areas to incorporated communities, the formation of permanent road divisions and/or Mello Roos community facility districts, 1911 benefit assessment or 1913 benefit assessment districts.

Recently the Town adopted an emergency repair to private nonmaintained road policy in situations where an emergency exists and there is a threat to the health and safety of the general population. The Council has been advised and is aware of gift of public funds and liability issues.

In order to be able to present a report to the Town Council on December 18, 2000 regarding their interest in additional legislative action, you have questioned whether County service areas restrict road maintenance by the County to streets and highways owned by or dedicated to the County. The case of Frommhagen v. Board of Supervisors, 197 CA3d 1292 , 1302, holds that neither

original Government Code section 253310.4A nor any amendments restricts road maintenance to County roads. The trial court's holding upheld by the appellate court finds that counties could properly expend money through service areas to maintain "private" roads provided the roads were open to public travel (not closed or in gated communities).

You also question whether County service areas can be extended to cities and where that enabling language could most easily be placed.

A section can be included in the County service law expanding the County service area procedure to cities. It may be difficult to obtain legislative support because of the available alternatives, i.e., permanent road divisions, 1911 Act or 1913 Act, assessments or community facilities districts.

In County service areas the benefitted parcels bear the entire burden of the cost. By utilizing a permanent road division, the Town of Yucca Valley could appropriate a certain percentage of maintenance costs from the road fund with the remaining percentage borne by the property owners. In order for the Town to justify paying for a portion of the maintenance, it is necessary to comply with the requirements of Streets and Highways Code section 969.5. I have discussed this via memo to Shane Stueckle dated March 9, 2000 (attached). It is also conceivable that without the required grants or leases of rights of way, the Town could also utilize private road divisions, but relegate the entire cost to the benefitted parcel owner..

Therefore, the permanent road easement may be a more attractive alternative to the County service area (see memo from Brulte's office attached) and administrative costs could be minimized.

Please contact me if you have any further questions.

Susan:

Here's how I'd approach Yucca Valley's request.

First, public officials can't spend taxpayers' money on private streets because that would be a gift of public funds (Calif Constitution Article XVI, Section 6).

Then, a private street inside a city doesn't become a city street until the city council accepts the street (Streets & Highways Code Section 1806).

So, how can a city pay for improving streets? Certainly the city council can spend general fund dollars or gas tax revenues. (Apparently they don't want to do that or you wouldn't be asking...)

A city can create a "permanent road division" (Streets & Highways Code Section 1813). A permanent road division is a device that kind of like a special district, usually created by counties (Streets & Highways Code Section 1160, et seq.). A permanent road division can spend money on public streets AND it can spend money on privately owned roads IF the private property owners grant a "permanent public easement" over their property (Streets & Highways Code Section 1160 (c)). That avoids the gift of public finds problem..

A permanent road division is easier to form than a County Service Area or other types of special districts. Why? First, they're exempt from LAFCO review (Government Code Section 56036 (a)(8)). Second, a county or a city can form a permanent road division that covers the whole county or the whole city and then create smaller "zones" for each road paving project. These zones don't have to be filed with the State Board of Equalization (Government Code Section 54906, added by SB 614, Morrow, 1999).

Where do permanent road divisions get the money to pave streets?

* Special taxes which require 2/3 voter approval (Streets & Highways Section 1178). Special taxes are also known as "parcel taxes" and each property owner pays the same flat amount regardless of the size of their lot.

* Parcel charges which are really benefit assessments and require the weighted-ballot procedures required by Proposition 218 (Streets & Highways Code Section 1179.5, see Government Code Section 54753 for the

procedures). Benefit assessments vary from property owner to property owner because they MUST be directly related to the benefit that each property owner gains.

* General obligation bonds which require 2/3 voter approval (Streets & Highways Code Section 1180). The bonds are paid off by an increase in property taxes, outside the usual 1% property tax rate set by Proposition 13. We call this an "extraordinary rate."

OK, if they don't like the idea of a permanent road division, here are a couple of alternatives:

* Mello-Roos Act allows a city to set up a community facilities district (not subject to LAFCO), and levy special taxes ("parcel taxes") with 2/3 voter approval. Mello-Roos taxes only pay for public works (Government Code Section 53313.5) and a few kinds of public services (Government Code Section 53313).

* Benefit assessments under the 1911 Act (Streets & Highways Code Section 5000, et seq.) or the 1913 Act (Streets & Highways Code Section 10000, et seq.). Of course, Proposition 218 requires a weighted-ballot review by the property owners (Government Code Section 53753).

So, in summary, I don't see the need for a bill. But if you want me to call city officials, please let me know.

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Fax Transmittal

FAX NUMBER TRANSMITTED TO: 1-760-228-0084

To: Shane Stueckle

Of: Town of Yucca Valley

From: Naomi Silvergleid NS

Subject: Nonmaintained dirt roads

Date: March 9, 2000

Pages: 2

COMMENTS: This is a follow up memo to analyze pertinent legal issues involving permanent road divisions," an alternative available to the Town for dirt road maintenance. Permanent road divisions were not thoroughly explored in the Willdan analysis of February 2, 1998.

A city can create a permanent road division throughout the entire incorporated boundaries of Yucca Valley and then create smaller zones for each project. Streets and Highways Code sections 1160, et seq., which may be utilized by Yucca Valley (see Streets and Highways Code section 1813) are applicable to privately owned roads provided there has been a grant or a lease of a right of way to the Town for the Town's use. It is my understanding that the private roads under analysis are not burdened by either an offer of dedication or a grant or lease of right of way. This will be necessary before a permanent road division can be formed. If these rights of way cannot be acquired, permanent road divisions cannot be formed.

FAX SENT

In addition, there will be increased liability to the Town as a result of any work performed by or at the bequest of the Town. However, the roads will remain private roads and thus liability will be limited to work performed in a negligent manner or the failure to perform work. I would advise that you contact PARSAC to determine PARSAC's willingness to provide a defense to any claims or actions filed concerning permanent road divisions.

I understand that the owners of the private roads are not interested in the formation of County Service Areas because of the perceived "excess" administrative costs which would be charged by the County. However, any alternative other than the individual property owners performing the maintenance work would result in an overhead cost, whether it is the overhead of the contractor or the cost of administration in addition to the overhead of the contractor. Since the Town will subject itself to some measure of liability for work performed, this cost should be spread amongst those who benefit.

If you have other questions regarding this, please feel free to call.

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INTER

OFFICE

MEMO

TO: Brad Kilger
Town Manager

FROM: Duane H. Gasaway
Project Management

SUBJECT: Town Maintenance of Dirt Roads

DATE: August 17, 2000

The first thing that must be said about Town maintenance of private, unimproved dirt roads within the Town is that the Town is constrained by California State Constitution, State statutes, and fundamental principles of liability risk management closely circumscribe how the Town may undertake such activity. This is not to say that the Town cannot maintain private, unimproved roads, but rather that the methods of doing so are quite limited.

Another aspect of private roads is that they are private. Private roads are the same as a person's front yard or patio. Lawful access to a private road for any purpose can only be gained with the approval of the property owner. Thus, any approach to Town maintenance of private roads requires the grant of an easement or right of way by the property owner. Entry on private roads without such an easement is a trespass.

This report discusses legal constraints upon the Town, policy issues, and the alternatives available to the Town for maintenance of unimproved, private roads. The subject of maintenance of private, unimproved roads has been discussed previously in Willdan Associates Report 1998, Town Attorney opinion dated February 19, 1998 and staff reports and memoranda dating to 1993.

THE PRIVATE ROAD MAINTENANCE DILEMMA

On the one hand, some property owners served by private, unimproved roads seek to have their roads maintained at minimal or no cost. On the other hand, the Town is constrained by law to avoid a gift of public funds. Transferring the burden of maintenance to the Town also transfers liability from the property owner to the Town. The Town has an obligation to protect public revenues by acting prudently to avoid undue risk and liability. Thus, where the Town desires to assist property owners by maintaining private roads, the challenge is find a way to achieve that end while acting within legal constraints and minimizing Town liability.

ALTERNATIVES FOR MAINTENANCE OF PRIVATE UNIMPROVED ROADS

1. **Acceptance of Private Unimproved Roads into the Town Maintained Road System**

   This is highest cost alternative for the Town and presents the highest degree of liability for the Town. This alternative would result in roads within the publicly maintained system, which fail to meet any standard. The responsibility for maintenance and upgrading the roads to minimal standards would rest with the Town.

   This alternative would require a grant of easement to the Town to allow the Town to maintain the private, unimproved roads.. Absent an appropriate grant of easement such maintenance effort would appear to violate the prohibition against gift of public funds.

   Town Council would have to consider whether this alternative is fiscally feasible.

2. **Formation of a County Service Area (CSA) within the Town**

   The San Bernardino County Office of Special Districts (SBCOSD) administers the CSA. The CSA alternative allows the Town to facilitate the maintenance of unimproved roads within the Town consistent with legal constraints and virtually no liability thereby addressing PARSAC concerns. Like the Town, the SBCOSD would require dedicated or existing prescriptive easements from property owners.

   Because the SBCOSD administers the CSA, there is no administrative cost to the Town. The SBCOSD works with property owners and administers a public competitive bid process to obtain maintenance services for the least cost.

   The formation of a CSA for maintenance of private, unimproved roads within the Town appears to is the least expensive governmentally administered alternative, while giving property owners direct involvement with the administering agency in determining level of service and administration of the district. This approach contemplates that the Town would allow the creation of a County administered service area within it boundaries.

   The SBCOSD administers approximately 50 road and park maintenance districts in the desert. The Town would not assume responsibility for maintenance of the roads. The responsibility for maintenance would rest with the County agency. The CSA gives property owners a role in the annual level of service to be rendered based on available funds and the condition of the road.

Town Participation in CSA funding

The Town Attorney was consulted regarding whether the Town could financially assist a CSA by bearing a portion of the annual costs of the CSA. The Town Attorney concluded in a legal opinion that this alternative would require grants of easements from all property owners being served by the CSA.

3. **Formation of a Permanent Road Division (PRD) with the Town**

California Streets and Highways Code Section 1813 confers authority on cities and towns to create PRD's. PRD formation is prescribed by State statute and allows property owners to petition or the Town to create a PRD. The PRD requires a dedication or public easement allowing it to "fit" within legal constraints. Property owners continue to bear responsibility for the maintenance and administrative costs, but are relieved of direct maintenance responsibility. PRD are typically formed for the purpose of paving and maintaining roads. Funding for the paving and maintenance derives from 2/3 voter approval of special taxes or "parcel taxes," general obligation bonds, or benefit assessments

Town liability is increased. The extent of liability seems to depend on the judgment of the legal counsel of the respective jurisdiction. San Diego County Counsel advises County staff that a PRD affords the County more protection than a County administered CSA. It is likely, however, that a County-administered CSA within the Town would result in less liability that a Town-administered PRD. Town Attorney should be consulted on this point.

4. **Homeowner's Association**

The HOA alternative fits within the legal constraints and represents the least cost method of maintenance for the homeowner and the Town. Town liability, funding for road maintenance, administrative costs are not affected by the formation of an HOA. The Town can assist formation of an HOA without incurring liability by providing a meeting place, access to ownership records, maps, information about road standards, bidding processes, etc.

The private homeowner's association offers the least costly method of maintaining private, unimproved roads while affording property owners the greatest degree flexibility and control over the roads and maintenance costs. This method does not escape the administrative overhead of the contractor providing the service, but allows property owners the opportunity to negotiate the cost of maintenance.

Property owners can form a homeowner's association consisting of those who desire to maintain the private, unimproved roads serving their property. The association can collect funds to purchase equipment for road maintenance or hire personnel to maintain the road at whatever level of service the association desires.

The homeowner's association requires no governmental involvement and therefore, no governmental costs. The contractor's administrative costs will be covered by whatever agreement is reached between the association and the contractor. This approach has the advantages of complete autonomy of the association, greater flexibility to change service provider or level of service, and direct communication between homeowners and service providers.

5. **Other Mechanisms**
   Mello-Roos Community Facilities District
   1911 Act or 1913 Act Benefit-Assessment Districts

LEGAL CONSTRAINTS

Gift of Public Funds: Article XVI, Section 6 the Constitution of the State of California prohibits municipalities and other governmental units from making a gift of public funds. Except for limited emergency repair of roads under very narrow circumstances, such expenditure of public funds may constitute a gift of public funds. This constraint is a matter of law and is inflexible.

Authority to Enter or Maintain: The Town or its agents cannot enter on land or maintain land without a dedication to the public by formal conveyance or common law dedication or the granting of a public easement. A road cannot be maintained without the owner granting authority to enter or maintain it through dedication or easement. For example, in County Service Areas (CSA) formed for purposes of road maintenance the County maintains roads within a public easement.

Town maintenance of private, unimproved, roads would require dedication and Town acceptance of the road into the maintained system and conveyance of the right to enter on the private property for maintenance purposes.

In order to enter on private property for the purpose of maintaining unimproved roads, the Town must accept the roads to be maintained into the Town's system of maintained roads AND obtain the appropriate easements from the property owner. Roads may be accepted into the system by offer of dedication, by resolution under a theory of implied common law dedication.

Maintenance of the private road without acceptance into the maintained system subjects the Town to liability and may be a gift of public funds that is constitutionally prohibited in California. (Note: These requirements are discussed in detail in Fax Memorandum from Town Attorney dated February 19, 1998) The owner of any property traversed by the road to be maintained must grant an easement to the Town for the purpose of road

maintenance. If any owner should refuse or fail to grant such an easement, the Town will be precluded from maintaining the road.

Liability: Liability has a dual role as a legal constraint and as a discretionary policy consideration. The Town Council has a fiduciary responsibility to protect public revenues by acting prudently to avoid undue risk and liability. Here, liability acts as a constraint. However, the Town Council has discretion in determining the amount of risk and liability it wishes to assume. Virtually every decision of the Town Council carries some degree of risk and liability. In this sense, liability is an implicit policy decision in the legislative actions of the Town Council.

POLICY ISSUES AND LIMITATIONS

Liability: As mentioned above decisions of the Town Council have an inherent degree of risk and liability. The Public Agency Risk Sharing Authority of California (PARSAC), the Town's liability insurer, advises "that the Town not enter into an agreement to maintain roads that are not owned by the Town." This advice is based on a basic tenet of risk management-do not accept responsibility over that which you do not own or control. This rule defines the point of maximum liability and risk for the Town.

The Town Council can assume the risk and liability of particular actions and indeed often does so without violating the rule cited by PARSAC. Several mechanisms exist to provide for the maintenance of unimproved roads. Each alternative has some degree of risk and liability. It is a policy decision of the Town Council as to how much risk and liability is to be assumed based on staff and legal advice and information available to the Council at the time of any particular decision.

Funding: Required funding may vary depending on the mechanism chosen for the maintenance of unimproved roads. The allocation of funds for the maintenance of the public street system is a policy decision of the Town Council. Funding of maintenance of the existing street system is limited. Accepting additional roads into the Town road system, especially unimproved roads, will increase the burden on existing limited resources.

Administrative Costs: Town administrative cost will vary depending upon the mechanism used to provide maintenance of unimproved roads. For example, a permanent road division (PDR) administered by the Town will have a higher administrative cost than a private Homeowners Association (HOA) formed to maintain an unimproved road.

Obtaining the Necessary Easements: Several methods available for the maintenance of private, unimproved roads ***require*** grant of easement or other legal instrument to allow the Town to maintain the roads. Because this requirement may render an otherwise satisfactory method of road maintenance impractical or, it is important that the mechanics of obtaining such an easement be discussed.

Easement Document

Obtaining the easements can be a challenge, especially where property owners reside out-of-state or outside the country. Generally, the process starts with preparation of the standard easement document granting an easement to the Town. Each property owner must execute this document. The document is typically prepared the Town Attorney to assure a standardized document for all properties and to facilitate the process.

Easement Required of Owner of Each Property

The document must be transmitted to each property owner for review and signature. It is important that each person having a security interest in the property execute the easement. Thus, it is necessary to identify the owners in order to obtain signatures from those legally authorized to grant an easement. An easement executed by one who is without authority to grant the easement is not valid.

A preliminary title report is used identify all owners of the property for which an easement is sought. Assessor records are not adequate to achieve this because they often do not identify all owners of the property or identify only the person receiving property tax statements. The preliminary title report will also identify encumbrances that may conflict with or affect the easement being granted.

In the current SR 62/Avalon Avenue signalization project the Town obtained preliminary title reports in order to identify the actual owners of the property. The cost was $400 per property. Discussion with that title company indicated that negotiation of a lesser fee might be possible for a group of several properties for road maintenance purposes

Once those having a security interest are identified, the easement document can be sent to them for their signature. Typically, these individuals have questions of staff or refer the matter to their own legal counsel who communicate with staff. Assuming all goes as planned the Town receives the necessary easements. However, it is a time consuming process and may not be successful if one or more property owners refuse to grant the easement or desire to be paid for the easement.

SUMMARY

The private homeowner's association (HOA) provides property owners with the least-cost method of maintaining private, unimproved roads within the Town. The HOA approach allows property owners to directly control level of maintenance, overhead, and annual expenditures. Because government does not participate in the maintenance of the roads under the HOA method, it incurs no liability. Liability arising from the road and its maintenance is borne by the property owners.

The CSA offers the most cost-effective, governmentally administered approach to the maintenance of private, unimproved roads. The CSA is administered by a County agency

created for this purpose and with extensive experience in special district administration. The CSA affords property owners direct involvement in determining the annual level of service. Because the risk and liability to the Town of Yucca Valley is minimal in comparison to other approaches.

The chart summarizes the above discussion:

	Liability	Easement Req'd	Admin Burden	Costs
Accept Roads Into System	High	Yes	Yes	Highest
Form CSA	Medium	No	None	Low
Form CSA w/Financial Assistance	Medium	Yes	Low	Low
Form PRD	Medium	Yes	Yes	Medium to High
Private HOA	None	No	No	None
Benefit/ Assessment District	Medium	Yes	Yes	Medium to High

ITEM "5"

INTER OFFICE

MEMO

To: Honorable Mayor & Town Council
From: Shane R. Stueckle, Deputy Town Manager SRS
Subject: Street Name Signs on Dirt Roads
Recommended Locations
Date: December 11, 2000

I. Background:

As the Council will recall, a total of $15,000.00 in Community Development Block Grant (CDBG) funds were appropriated for the installation of street name signs on dirt roads with adoption of the 2000/2001 FY budget. San Bernardino County Economic and Community Development has authorized the project to move forward.

The Traffic Commission reviewed this matter at their meeting of November 27, 2000. Based upon the Commission's discussion, attached to this Memorandum is a listing of recommended installation locations. If this listing is acceptable, no further action of the Council is necessary. But if the Council desires to install signs at other locations, then specific direction should be given to staff.

The recommended approach for installation is the through the use of Town forces. If the Town contracts for this project, fewer signs will be installed. Staff contacted a local contractor who provided a bid estimate.

This item is scheduled for Town Council action at the meeting of December 21, 2000.

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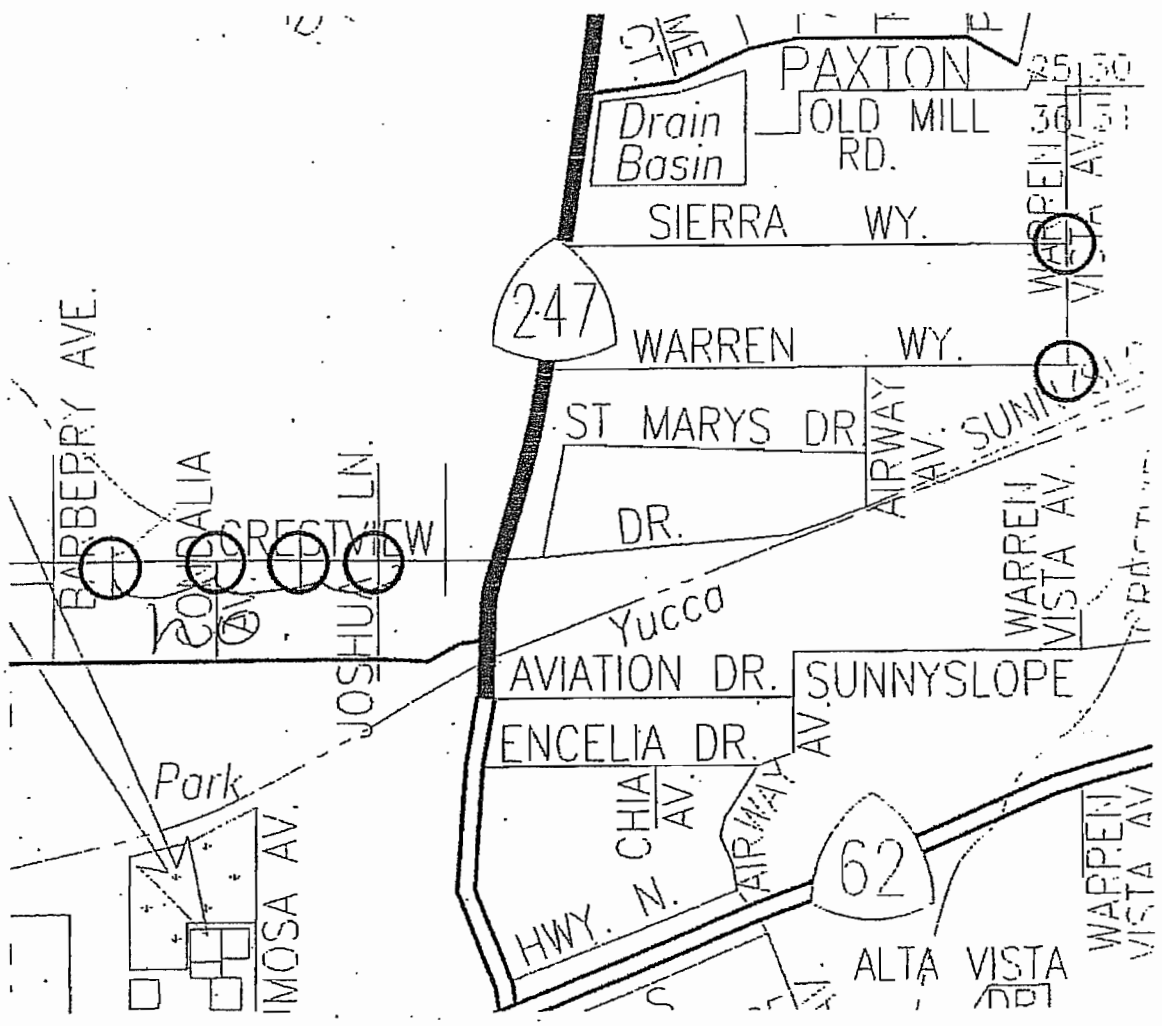
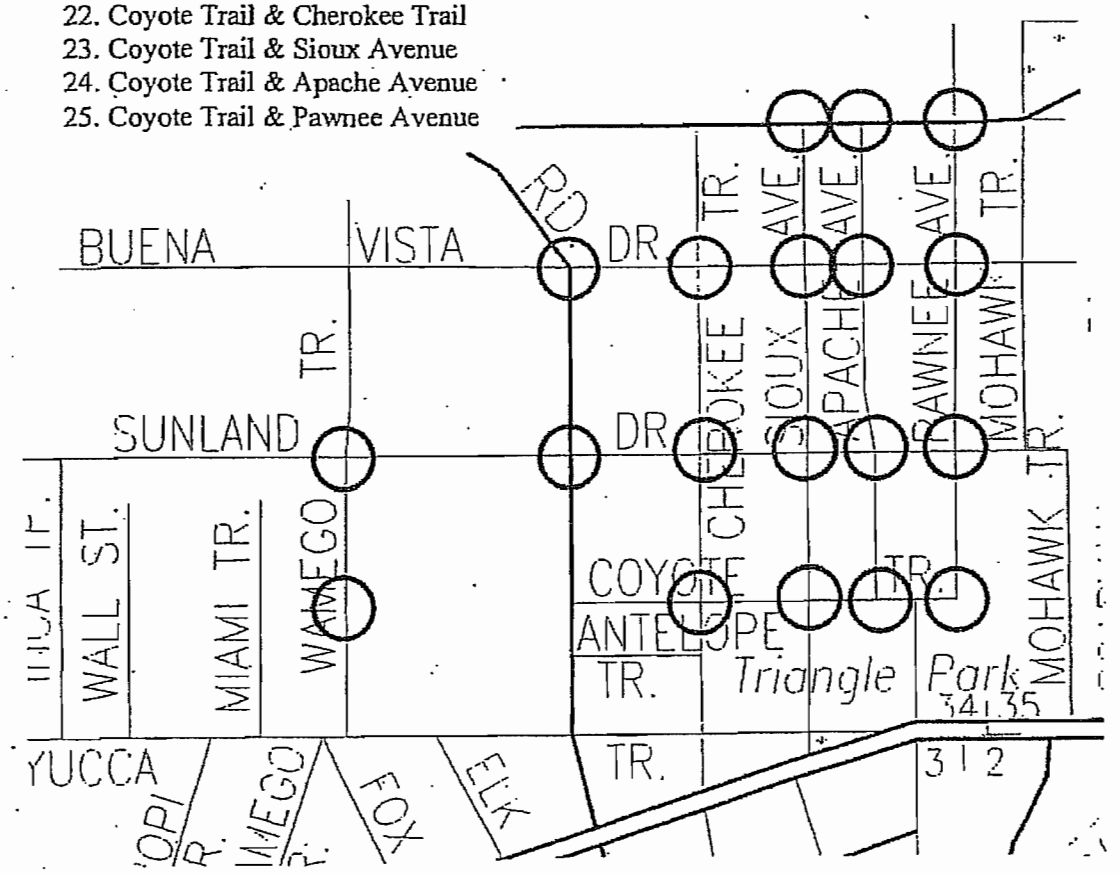
DIRT ROAD STREET SIGNS, PROJECT NO. 89-14
Possible Candidates for Dirt Road Street Signs

1. Warren Vista Avenue & Sierra Way
2. Warren Vista Avenue & Warren Way
3. Crestview Drive & Barberry Avenue
4. Crestview Drive & Condalia Avenue
5. Crestview Drive & Dumosa Avenue
6. Crestview Drive & Joshua Lane



DIRT ROAD STREET SIGNS, PROJECT NO. 89-14
Possible Candidates for Dirt Road Street Signs

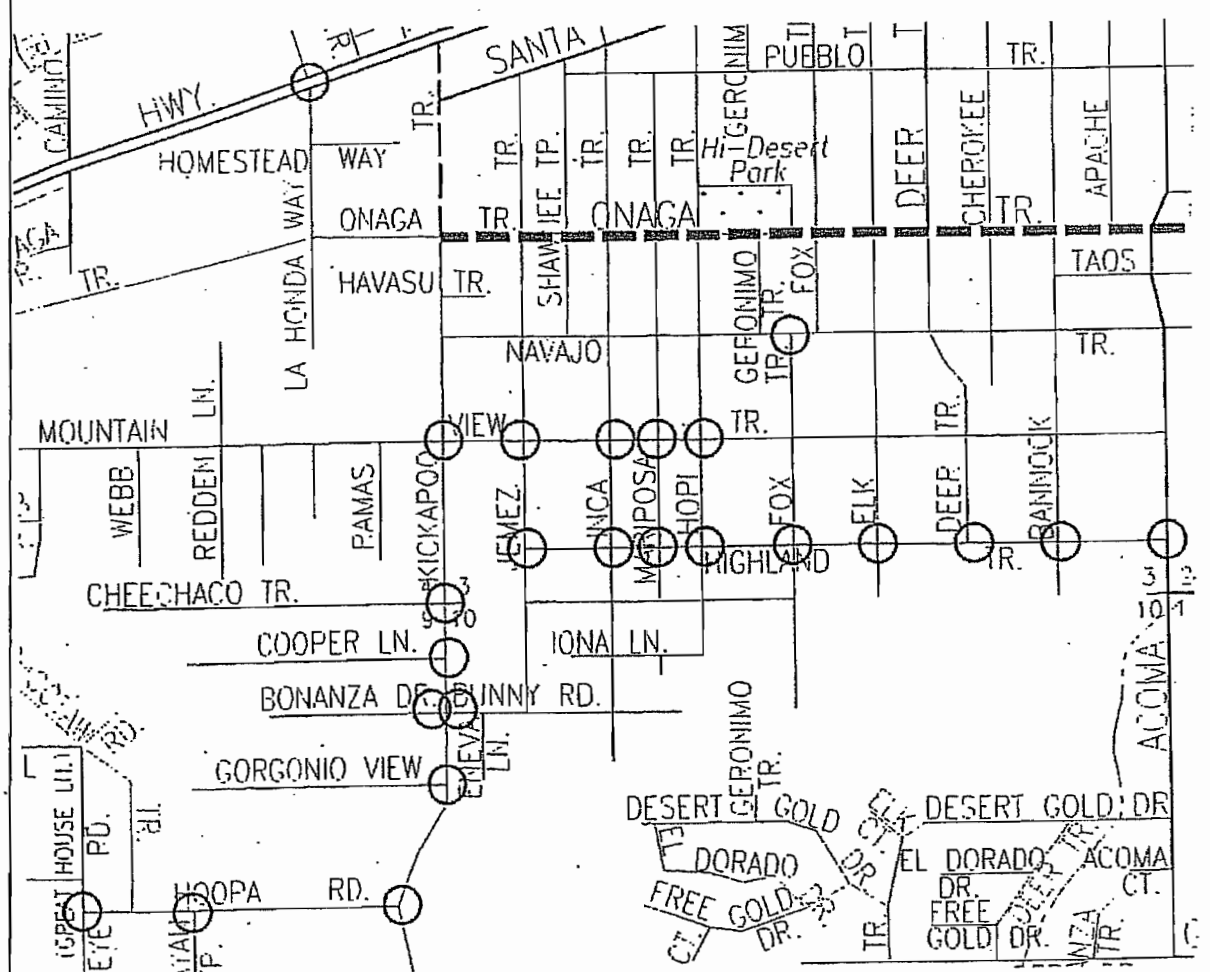
7. Sunnyslope Drive & Sioux Avenue
8. Sunnyslope Drive & Apache Avenue
9. Sunnyslope Drive & Pawnee Avenue
10. Buena Vista Drive & Pioneertown Road
11. Buena Vista Drive & Cherokee Trail
12. Buena Vista Drive & Sioux Avenue
13. Buena Vista Drive & Apache Avenue
14. Buena Vista Drive & Pawnee Avenue
15. Sunland Drive & Wamego Trail
16. Sunland Drive & Pioneertown Road
17. Sunland Drive & Cherokee Trail
18. Sunland Drive & Sioux Avenue
19. Sunland Drive & Apache Avenue
20. Sunland Drive & Pawnee Avenue
21. Coyote Trail & Wamego Trail
22. Coyote Trail & Cherokee Trail
23. Coyote Trail & Sioux Avenue
24. Coyote Trail & Apache Avenue
25. Coyote Trail & Pawnee Avenue



DIRT ROAD STREET SIGNS, PROJECT NO. 89-14

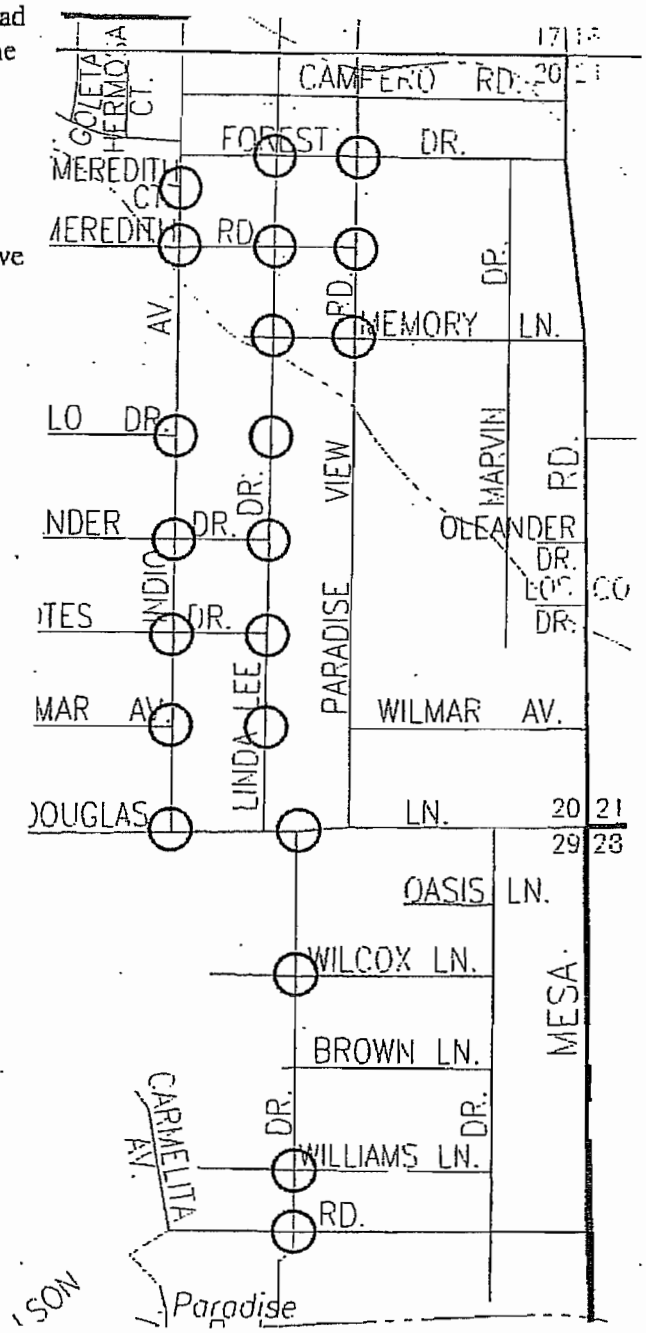
Possible Candidates for Dirt Road Street Signs

26. La Honda Way & SR 62
27. Hoopa Road & Hawkeye Road
28. Hoopa Road & Mayan Trail
29. Kickapoo Trail & Hoopa Road
30. Kickapoo Trail & Gorgonio View
31. Kickapoo Trail & Bonanza Drive
32. Kickapoo Trail & Bunny Road
33. Kickapoo Trail & Cooper Lane
34. Kickapoo Trail & Cheechaco Trail
35. Kickapoo Trail & Mt. View Trail
36. Mountain View Trail & Jemez Trail
37. Mountain View Trail & Inca Trail
38. Mountain View Trail & Mariposa Trail
39. Mountain View Trail & Hopi Trail
40. Navajo Trail & Fox Trail
41. Highland Trail & Jemez Trail
42. Highland Trail & Inca Trail
43. Highland Trail & Mariposa Trail
44. Highland Trail & Hopi Trail
45. Highland Trail & Fox Trail
46. Highland Trail & Elk Trail
47. Highland Trail & Deer Trail
48. Highland Trail & Bannock Trail
49. Highland Trail & AcomaTrail



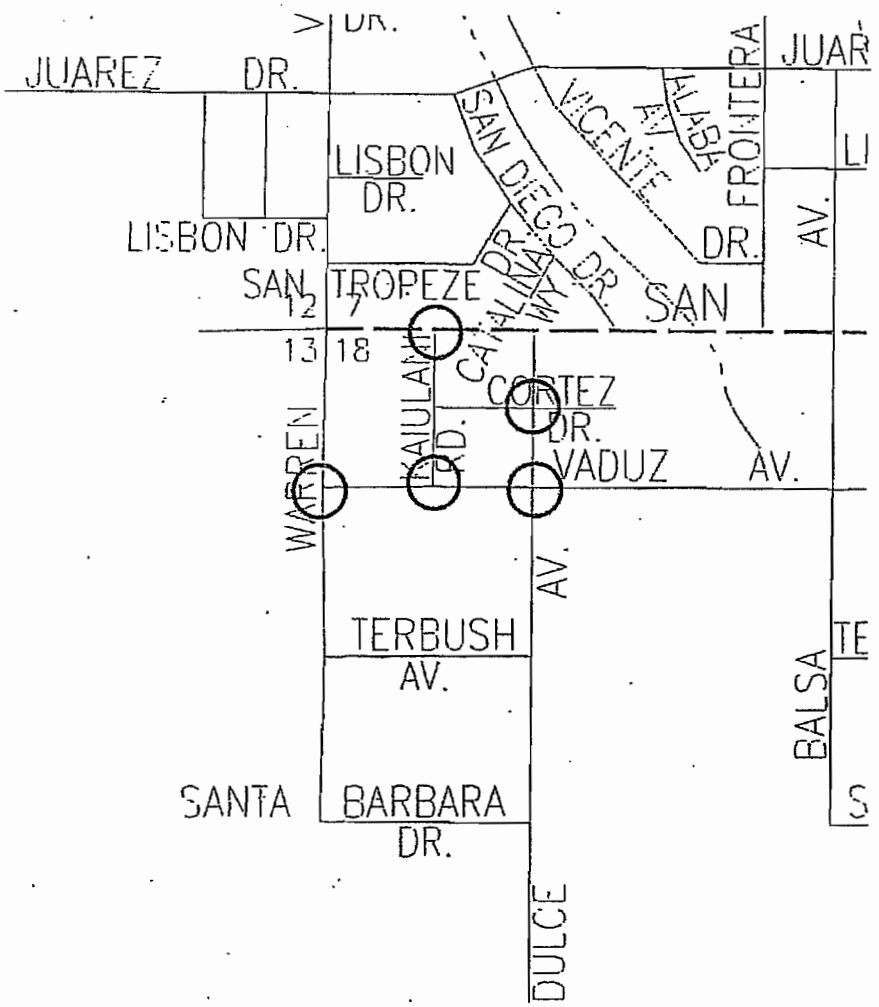
DIRT ROAD STREET SIGNS, PROJECT NO. 89-14
Possible Candidates for Dirt Road Street Signs

50. Paradise View Road & Forest Drive
51. Paradise View Road & Meredith Road
52. Paradise View Road & Memory Lane
53. Linda Lee Drive & Forest Drive
54. Linda Lee Drive & Meredith Road
55. Linda Lee Drive & Memory Lane
56. Linda Lee Drive & Ocotillo Drive
57. Linda Lee Drive & Oleander Drive
58. Linda Lee Drive & Los Coyotes Drive
59. Linda Lee Drive & Wilmar Avenue
60. Linda Lee Drive & Douglas Lane
61. Linda Lee Drive & Wilcox Lane
62. Linda Lee Drive & Williams Lane
63. Linda Lee Drive & Nelson Avenue
64. Indio Avenue & Meredith Court
65. Indio Avenue & Meredith Road
66. Indio Avenue & Ocotillo Drive
67. Indio Avenue & Oleander Drive
68. Indio Avenue & Los Coyotes Drive
69. Indio Avenue & Wilmar Avenue
70. Indio Avenue & Douglas Lane



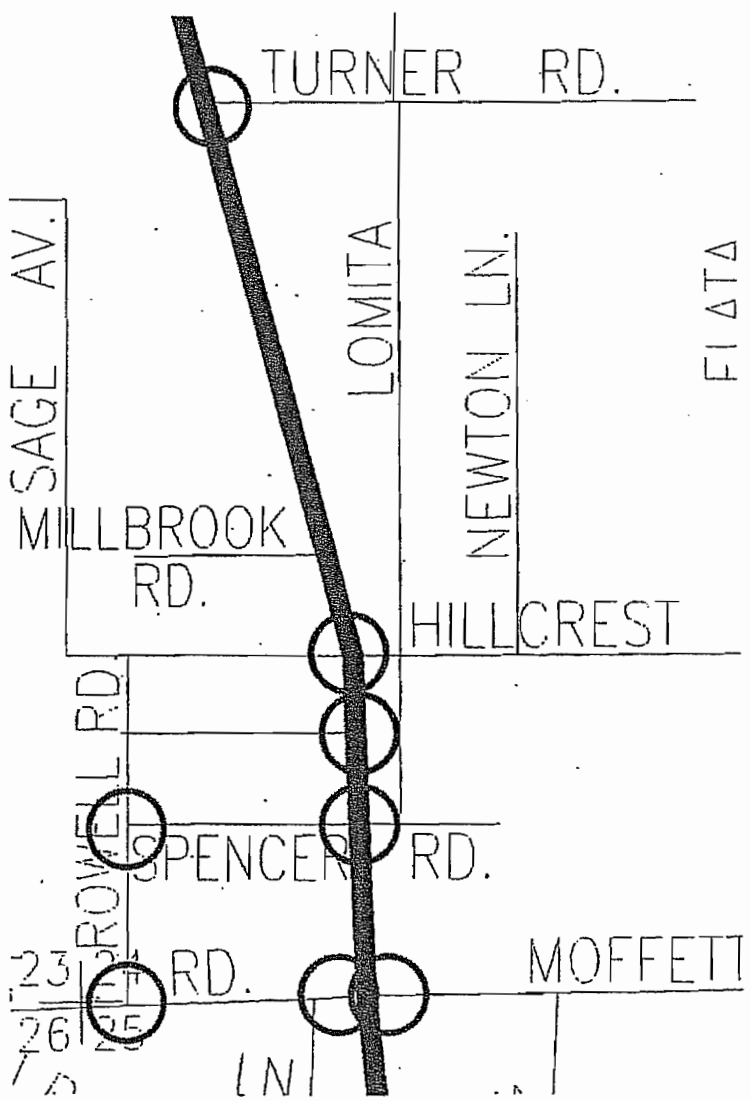
DIRT ROAD STREET SIGNS, PROJECT NO. 89-14
Possible Candidates for Dirt Road Street Signs

71. Warren Vista Avenue & Vaduz Avenue
72. Kaiulani Road & San Andreas Road
73. Kaiulani Road & Vaduz Avenue
74. Dulce Avenue & Cortez Drive
75. Dulce Avenue & Vaduz Avenue



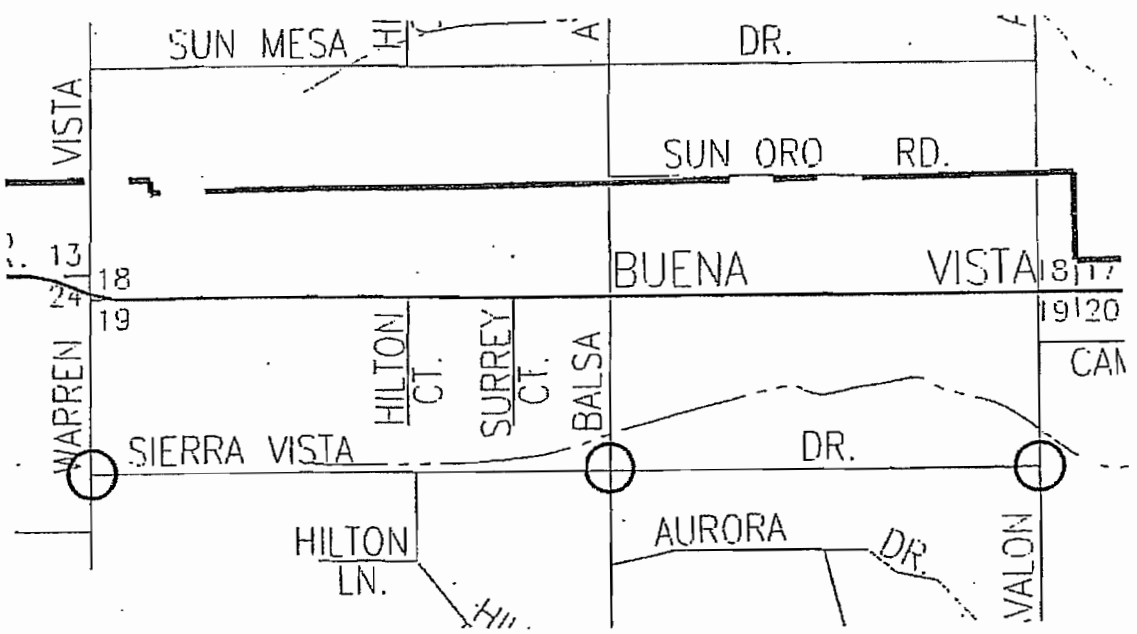
DIRT ROAD STREET SIGNS, PROJECT NO. 89-14
Possible Candidates for Dirt Road Street Signs

76. Old Woman Springs Road & Turner Road
77. Old Woman Springs Road & Hillcrest Drive
78. Old Woman Springs Road & Griffin Road
79. Old Woman Springs Road & Spencer Road
80. Old Woman Springs Road & Cobalt Road
81. Old Woman Springs Road & Moffett Lane
82. Cobalt Road & Rowell Road
83. Spencer Road & Rowell Road



DIRT ROAD STREET SIGNS, PROJECT NO. 89-14
Possible Candidates for Dirt Road Street Signs

84. Sierra Vista Drive & Warren Vista Avenue
85. Sierra Vista Drive & Balsa Avenue
86. Sierra Vista Drive & Avalon Avenue



YUCCA VALLEY TOWN COUNCIL STUDY SESSION HIGHLIGHTS
MONDAY, APRIL 3, 2000

Direction to Staff

- Study Session notes: Continue attending as have been.
- Animal Shelter: Explore avenues for new facilities, look at policies to make some determination if want to be more proactive regarding animal control, look at possibility of leash law. Staff will come back with alternatives.
- Completion of General Plan Circulation: Complete last segment of Kickapoo to Yucca Trail, if developer can contribute fine if not was planned anyway.
- Low and Moderate Income Housing: Negotiate with Unity Home to see if they would be interested in buying all 5 duplexes to continue their program. Rehab final unit.
- Park Master Plan CIP: May want reword since Machris Park is in the works.
- Conclude Dirt Road Maintenance Assessment District Formation: Direction to staff to look at any way to get done.
- Assess Feasibility of Purchasing Land for Flood Control Basins: Town has not sent $120,000 until we can get county to commit to purchase property for east and west burnt mountain basins.
- Finalize funding alternatives for street directional signs on non-dedicated dirt roads: Council has authorized funds, staff in process of getting done.
- Formulate a Town western entrance beautification/enhancement plan: Staff setting up meeting with So Cal Edison regarding undergrounding of utilities. Eric Muller may attend.
- Update Town Economic Development Strategy. Market award winning water.
- Investigate Irrigation Alternatives: resolve whether or not going to have joint meeting with water district.
- Councilman Leone requested immediate action in getting a leash law.
- Sign ordinance: do not move the issue up to the top 10 list.
- Councilman Leone would like business license looked at as time permits.

TOWN COUNCIL
STUDY SESSION

APRIL 3, 2000
6:00 p.m.

A Town Council Study Session, open to the public will be held at the YUCCA VALLEY COMMUNITY CENTER, Mesquite Room, 57090 29 Palms Highway, Yucca Valley, CA 92284, on Monday, April 3, 2000, 6:00 p.m.

DISCUSSION ITEMS

1. Town Council Strategic Plan goal status report.

COMMUNITY INPUT

COUNCIL COMMENTS

FUTURE STUDY SESSION ITEMS (Tentative)

1. Capital Improvement Planning, cont.
2. Street Sweeper contract - Leone
3. Grant Program Status Report
4. Joint meeting with Museum Association
5. Planning Commission Appointment process - Scott

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To: Brad Kilger
Town Manager

From: DHG Duane H. Gasaway
Project Management

Subject: Status Report
Dirt Road Maintenance through Permanent Road Division

Date: March 10, 2000

BACKGROUND

In February 1998 Willdan Associates prepared a dirt maintenance study which reviewed several available mechanisms for the maintenance of dirt roads within the Town. The Willdan study reviewed homeowner associations, assessment district, special service district and Town funded approaches to maintenance. The study did not include the Permanent Road Division approach available under California statute and discussed below. In recent correspondence Willdan has pointed out that any approach used by the Town to maintain private roads has corresponding liability for the Town.

There are a number of unimproved, dirt roads within the Town, which are not a part of the Town street system. A few citizens who are served by these roads propose that the Town maintain these roads. Recently, the Town facilitated the proposed creation of a county service area (CSA) to maintain Bonita Trail and a portion of Pueblo Trail serving approximately 32 homeowners. When surveyed, 16 property owners responded, with 11 against/5 in favor of formation of the CSA. Opponents of the CSA cited the administrative overhead and inflationary provisions of the CSA cost as the basis for their opposition

More recently, the Permanent Road Division has been suggested as a possible vehicle for maintaining, unimproved dirt roads within the Town without accepting them into the Town street system.

PERMANENT ROAD DIVISION (PRD)

Law prohibits the Town from expending public money on private streets, because such expenditure is considered a gift of public funds under the California Constitution and is prohibited. California Streets and Highways Code Section 1100 et seq. allows counties to create PRD's. However, staff contacted San Diego, Shasta and Nevada counties who utilize PRD's and found that none of the Counties has created a PRD within an incorporated town or city.

California Streets and Highways Code Section 1813 confers the authority on cities to create PRD's. Staff is currently contacting other towns and cities within PARSAC to determine if any have utilized the PRD approach.

Statute allows creation of a Town-wide PRD with smaller PRD's for areas or neighborhoods within the Town with a level of maintenance depending on the circumstances of each subarea. However, the Town must obtain 'permanent public easements" over the roads to be maintained.

Summary of PRD Formation

1. Property owner petition to Town Council (50% of assessed valuation)
   OR
   Town Council adoption of resolution within 30-60 days of public hearing on establishment of PRD

2. Protest by 25% to 50% of landowners in prospective PRD not withdrawn after hearing mandates election and majority landowner voter approval

3. Protest by 50% or more of landowners in prospective PRD representing more than 50% of the expected revenue to finance the PRD and not withdrawn after hearing mandates abandonment of the proposed PRD for at least one year.

4. Following the hearing or election, as the case may be, the Town Council shall decide if the PRD is to be formed.

5. California Streets and Highways Code Section 1160-1197 set forth detailed provisions of PRD formation.

6. PRD formation is a mechanism to allow Town maintenance of private roads through obtaining permanent public easements. Such maintenance would otherwise be a prohibited gift of public funds. The private property owners bear the financial responsibility for maintenance and associated administrative costs. Formation of the PRD does not relieve the private property owner of this financial responsibility.

Public Easements

The fundamental and necessary first step to Town maintenance of private roads is the acquisition of "permanent public easements" over the roads. The Town can expend public funds to maintain private roads if it forms a PRD and obtains an easement from each of the private property owners. Because the easements are granted allowing public access, the gift of public funds is avoided.

San Diego County

The County has seven PRD's for maintaining both public and private roads. The County is in the process of transferring its 65 CSA's into the PRD. County staff reports that San Diego County Counsel advises that the PRD provides the County more liability protection with respect to the maintenance of private roads than the CSA mechanism. The

reported rationale is that the PRD will not increase County liability beyond that incurred by CSA. The County has not created a PRD in any incorporated Town or City within the County.

Nevada County

The County utilizes PRD's but has no PRD for the maintenance of private roads. Roads that are maintained through PRD must be built to County standards. The County no longer accepts any roads into the County system. County staff reports that Nevada County counsel advises the County not to maintain private roads through PRD, contract or any other mechanism due to the liability incurred by such maintenance. County Special Districts Manager Tom Martin feels the usefulness of the PRD is substantially limited due to liability and the requirements of Prop 218.

Shasta County

Of the County's approximately 14 PRD's, none provide for maintenance of private roads. The County requires dedicated public right of way and development of the road to County standards. The County operates a dust mitigation program that allows property owners to borrow funds to bring the road to County standards and then maintains the road through a PRD.

Yolo County

The County operates two districts that maintain private roads. One district was formed as a CSA. County staff refers to the other as a PRD. A special tax levy for purposes of road maintenance was approved by majority vote of the 21 property owners. The owners voted to impose an annual $78.00 parcel tax to maintain the paved roads within the district. Maintenance is primarily patching of potholes, shoulder and culvert maintenance. Staff indicated this parcel fee is barely enough to cover maintenance and would not be sufficient funding for unimproved roads.

PRD's in PARSAC Member Towns/Cities

Several members of the Public Agency Risk Sharing Authority of California (PARSAC) were contacted regarding the use of PRD's within their respective jurisdiction. Ridgecrest, Alturas, Avalon, Canyon Lake, Coalinga, Grass Valley, Pacific Grove, Truckee, and Twentynine Palms do not utilize PRD's. The Town of Truckee has a PRD it "inherited" from Nevada County when the Town incorporated, however the PRD maintains public, not private, roads. PARSAC administrative staff does not know if any members utilize the PRD and further are not certain if PARSAC liability insurance coverage extends to road maintenance through a PRD. Town Attorney advises consultation with PARSAC staff regarding a defense to claims or actions that might arise

out of PRD operation. Staff is reviewing its policy coverage provisions and will respond our inquiry on Monday, March 13, 2000.

Liability Considerations

It appears there is little PRD experience among PARSAC members. At the County level utilization of a PRD appears to hinge on the advice of legal counsel of each jurisdiction and the policy decision of the legislative body as to the level of risk it is willing to assume. Jurisdictions with extensive resources, such as San Diego County, assume the risk, while others such as Nevada County refuse to accept such risk. No doubt a variety of factors including liability coverage, available resources, and litigation history contribute to the decision to utilize the PRD.

The Town Attorney advises that if property owners maintain their own private roads the Town incurs no liability. However, once the Town makes a policy decision to maintain private roads, it incurs liability for actions arising out of maintenance of the roads. The Town may not incur liability when, in responding to an emergency, it must clear a road or otherwise do something to the road to gain access to properties in an emergency.

Typically, an emergency exists when there is a direct threat to life or property. Construing "emergency" to the point of providing maintenance in the absence of a true, direct threat to life or property, could violate the California Constitutional prohibition on gift of public funds.

Administrative Costs

The actual cost of administering a PRD is identified during the formation process and is dependent on property owners' desired level of service and the cost of such service, among other things. Absent a specific area proposed for maintenance it is difficult to calculate the cost. However, staff could create a "hypothetical" PRD for purposes of analyzing the cost of a PRD.

Please let me know if I may provide additional information or if you desire a "hypothetical" analysis.

Singer & Silvergleid, Inc.
3880 Lemon Street, Ste. 420
Riverside, California 92501
(909) 784-3800
(909) 781-4083

Fax Transmittal

FAX NUMBER TRANSMITTED TO: 1-760-228-0084

To: Shane Stueckle

Of: Town of Yucca Valley

From: Naomi Silvergleid NS

Subject: Nonmaintained dirt roads

Date: March 9, 2000

Pages: 2

COMMENTS: This is a follow up memo to analyze pertinent legal issues involving permanent road divisions," an alternative available to the Town for dirt road maintenance. Permanent road divisions were not thoroughly explored in the Willdan analysis of February 2, 1998.

A city can create a permanent road division throughout the entire incorporated boundaries of Yucca Valley and then create smaller zones for each project. Streets and Highways Code sections 1160, et seq., which may be utilized by Yucca Valley (see Streets and Highways Code section 1813) are applicable to privately owned roads provided there has been a grant or a lease of a right of way to the Town for the Town's use. It is my understanding that the private roads under analysis are not burdened by either an offer of dedication or a grant or lease of right of way. This will be necessary before a permanent road division can be formed. If these rights of way cannot be acquired, permanent road divisions cannot be formed.

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In addition, there will be increased liability to the Town as a result of any work performed by or at the bequest of the Town. However, the roads will remain private roads and thus liability will be limited to work performed in a negligent manner or the failure to perform work. I would advise that you contact PARSAC to determine PARSAC's willingness to provide a defense to any claims or actions filed concerning permanent road divisions.

I understand that the owners of the private roads are not interested in the formation of County Service Areas because of the perceived "excess" administrative costs which would be charged by the County. However, any alternative other than the individual property owners performing the maintenance work would result in an overhead cost, whether it is the overhead of the contractor or the cost of administration in addition to the overhead of the contractor. Since the Town will subject itself to some measure of liability for work performed, this cost should be spread amongst those who benefit.

If you have other questions regarding this, please feel free to call.

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AMJ town could ask for a surety bond.
EM if were going to do before should go ahead and do it.

BN has been on town's list long time before RV park need to go forward.

LMI

SRS gave background of LMI discussions leased 4th of 5 structures to unity home. Council questioned overall philosophy of RDA, should agency be in property ownership business. Report on page 11. In terms of overall programs, tied in housing element update.

BK policy issue is does town want to be in property ownership business. Would prefer to find way to find separate entity to take care of property or to sell the units to an entity who would use it

Council consensus to negotiate with unity home to see if they would be interested in buying all 5 houses to continue their program.

BN do we have funds available for rehab of 5,. SRS yes. PC might have to do that.

BK are low and moderate set aside funds. Only other thing that came up was maybe applying to infrastructure. PC have to find out what is going on with unity home.

EM is it possibly for town to carry paper and turn into mortgage.

BK hearing want to get unit rehabbed, and start negotiations with unity home.,

COMPLETE park master plan cip.

BK does council want to expand on master plan cip.

PC think because of interest generated, would be difficult to take off top ten. Maybe have to go on to next stage.

TS agree, know moving right into next focus alternatives . Have Machris park out of way, may want to reword it, may want to say something about continue to fulfill goals.

BK will work up something.

3. Conclude dirt road maintenance assessment district formation.

BK work with attorney possibly amending state law to give same authority to cities that counties have to form maintenance districts. Granland's office declined. Spend lot of

time with Brulte, requested me to spend time talking with committee on local governance. Had concerns relative to gift of public funds under cities doing what counties allowed.
SRS explained permanent road divisions. Residents did not favor county overhead costs for the road maintenance district. Would not be willing to consider town picking up costs but reconsidered. Prd•s seem to be similar to county csa, can be very long drawn out process.

BK pursuing prd. Do you still want us to pursue if we can pay county•s administrative fees without it being construed as gift of public funds.

PC guidance has not changed from past. Look at any way to get it done.

4. Assess feasibility of purchasing land for flood control basins.

BK in discussions with county now, have not sent 120,000 until we get them to commit to purchase property for east and west burnt mountain basins. Will be coming back want something in writing out of county flood control.

6. BK council authorized funding and we are in process of getting done. Will be coming back on that.

8. Western entrance

BK staff able to scope out concept included funding item through cdbg, but recommended not fund this year and apply to the pi town SR 62 project to get that one completed.

SRS utility poles letter on 14,15, 16. Takes 4 mil have slightly less than 1 mil.

BK setting up meeting with Edison.

9. ED strategy.

BK did adopt ed plan. Jas in process of working up marketing plan have gone with western charm and hospitality theme. Told of what doing. web page revamped.

PC should alternative routes into basin be considered in the objective.

BK sitting with county and sanbag on 27th, they are going to be looking for if anything going to be done on regional basis what going to use limited dollars with.

Bullet point out of study sessions.

JAS recommending media mix. Special events, identify no cost and low cost. Met with

hdwd looks like with water award their approach to marketing is that they are not in business of marketing community. Going to look into bottling water. They will pick up half if some other organization (town) would pick up other half.
BN had article in la times magazine, hate to miss boat on grubstakes days. JAS timeline is 4-6 weeks. Did good art work for missions springs. Main problem is getting out by grubstake days.

BK will cost 7,000 is in ed budget.

Council consensus to go. Don't slow down.

EM as rep for old town merchants present what see on west end of wish list. Like to see as on going aspects of development and culturalization of west end of yv. Will connect into visioning initiated in by gateway coalition.

PC would it be appropriate to have Eric at the meeting with Edison. OK

BK helpful, some will not happen without support of merchants in west end.

5. Investigate irrigation alternatives.

BK understand mayor will be setting out follow up letter saying trying to play ball, need to get info from them.

PC did you send memo 29 and town looking jointly at sewer matters.

TS like to get resolved whether or not going to have joint meeting.

RL like immediate action in getting leash law.

BK staff like direction on issue of sign ordinance. TS reopening that can of works will take lot of time and focus. Council doesn't want to move up to top 10./ RL thinks business license should be looked at. As time permits.

adjourned at 8:48 p.m.

to answer Council questions on the status of the program.

Mr. Lis reported the workshop was on Saturday, November 27, 1997, noting there was a small but enthusiastic audience. Gave an explanation of recyclable materials, types of buy-back facilities within the Town, and that Waste Management will be placing yellow tags on recycling containers to explain if there is something that is contaminating the container and other problems with handling the containers.

8. **Community Development Department**

A. **Multi-Purpose Restroom Facility, Community Center Authority (CCA) Recommendation, Authorization to go to bid for construction.**

Community Development Director Stueckle gave a brief background of the CCA and how funds can be used. Based upon existing funds, the CCA adopted a 1997/98 Capital Improvement Program which the Council also adopted with its budget. One of the primary projects was a multi-purpose restroom project located approximately where the existing "snack shack" and electrical room are now located. Concern was expressed by the CCA regarding the total cost of the project. Outlined the scope of the project, advised estimated of the total cost of the project is $123,000 - $128,000. CCA is advising that they have thoroughly addressed and discussed the alternatives, and based on the results of their discussions felt this type of construction was the most pertinent for the Community Center. Staff recommendation is that the Council authorize staff to go to construction bid for the project, and to return to the CCA for bid evaluation.

Mayor Hunt opened the floor to public comment and having received no requests to speak closed the public comments.

Council Member Loveless moved to authorize staff to go to construction bid for the multi-purpose restroom facility and direct staff to return to the CCA for bid evaluation as recommended. Council Member Crouter seconded. Motion carried 5-0, on a voice vote.

B. **Phase I Road Maintenance and Improvement District Program.**

Community Development Director Stueckle reported based upon Council discussion at the Study Session of December 1, 1997, regarding the dirt road maintenance program, because of the time frame which the Council would like to have the information returned for further discussion, the recommendation is that the Council appropriate $18,000 for preparation of the Phase I Report. Advised where funds will come from and go to. Advised approximately $500,000 of LTF funds were reserved in this years budget but were not allocated to any specific road construction projects because of

Council's indicated desire to address the dirt road maintenance issue. Advised it may be necessary later in this fiscal year to pay for some of the project from the General Fund, no more than $5,000.

Mayor Hunt opened the floor to public comments and having received no requests to speak closed the public comments.

Council Member Crouter moved the Town Council appropriate $18,000.00 for preparation of the Phase I Road Maintenance and Improvement District Program from/to the following accounts:

$18,000.00	(Expense Account)	350 85-03 83000.000
<$18,000.00>	(Transfer Account)	350 00-00 49999.000
$18,000.00	(Transfer Out Account	117 00-00 99999.00

Council Member Loveless/Leone seconded. Motion carried 5-0, on a roll call vote.

AYES:	Council Member Crouter, Hockett, Leone, Loveless and Mayor Hunt
NOES:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC COMMENTS

Ron Martinez, Yucca Valley, representing the Concerned Citizens of Paradise Valley regarding the CDBG awarded to the Town by HUD and the County. Feels it is a great opportunity for low and middle income communities to apply for the money. Advised they would like to apply for approximately $1,100.00 in CDBG funds for a fence on the north side of the basketball court and baseball field at Paradise Valley Park to keep basketballs and baseballs from going into a ditch in that area.

Scott McKone, Yucca Valley, commented he has read an article published in the Hi-Desert Star regarding the Town's spending on dirt road maintenance. His concern is that this will have to continue year after year and would cost an enormous amount of money. Suggested forming a 5 or 10 year plan to pave these roads. Director Stueckle advised for the Town standard 26' width (2 travel lanes and a small shoulder) with no extensive amount of grading or other issues costs approximately $130,000 per mile. Mr. McKone commented that if a special assessment is added to the property tax bill the voters will have to vote on it. Mayor Hunt advised this is part of the program being addressed at this meeting regarding the $18,000.00 to set up the preliminary works on this project; there will be additional study sessions by the Council and public hearings. It will not be an overnight process. Recommended that Mr. McKone participate in the process. Town Manager Kilger advised if

Mr. McKone will leave his address and phone staff will keep him advised.

STAFF REPORTS AND COMMENTS

Town Manager Kilger distributed and read a portion of a copy of an article in the BMXer stating there was another successful year for the Coyote BMX track and the Town of Yucca Valley. Advised of his attendance at the Inland Empire Economic Development Conference, noting the focus was on welfare to work. Advised the Counties and the State have a responsibility to return a minimum of 30% of those on welfare to the workforce. They are looking towards local entities, counties and cities to participate in the effort. Noted it also provides assistance to local businesses in supplementing some of the costs for hiring individuals and getting them back into the workforce.

Community Development Director Stueckle reported to Council on the status of the Night Sky Ordinance. Noted there has been an increase in attendees at the public hearings. Final public hearing is scheduled for December 16, 1997.

Community Services Director Schooler announced that Saturday, December 6, 1997, there will be a Christmas Craft Fair at the Community Center and in the evening is the Christmas Tree lighting at 5:00 PM. Also the Museum Association will host a Christmas party from 1:00 - 5:00 PM.

MAYOR AND COUNCIL MEMBER REPORTS AND COMMENTS

9. **Council Member Crouter**

Reminded everyone of the Council study session on what might be done for citizens who live on dirt roads. There was a lot of interest and many turned out for the session. The study session would have never been set up had not the entire Council agreed to have it.

Felt the Traffic Commission has done a marvelous job on many issues.

Congratulated Terry Hunt on his nomination as Mayor.

Commented that Ellin Loveless has done a fine job as Mayor. Asked everyone present to give a standing ovation for all the work she has done.

Congratulated Council Member Leone on his selection as Mayor Pro Tem.

YUCCA VALLEY TOWN COUNCIL
STUDY SESSION

October 18, 1999
6:00 p.m.

A Town Council Special Meeting and Study Session, open to the public will be held at the YUCCA VALLEY COMMUNITY CENTER, Mesquite Room, 6:00 p.m.

DEPARTMENT REPORTS

1-4	1.	Avalon Traffic Signal
5-25	2.	Redevelopment Housing Project/Units Historical Overview
26-35	3.	Dirt Road Maintenance Legal Responsibilities
36-46	4.	Economic Development Agency Grant Status Report

COMMUNITY INPUT

FUTURE STUDY SESSION ITEMS (Tentative)

1. **October 25, 1999, 7:00 p.m. (please note later start time)**
   - Park Improvement/Maintenance Cost Analysis
   - Park Master Plan Implementation Program
2. **November 1, 1999, 6:00 p.m. (Joint meeting with Planning Commission)**
   - Wireless Communication Ordinance
   - Commercial Design Standards
   - Sign Ordinance Implementation
3. Goal Setting Workshop (11/10, Wed. at 5:00p.m.)
4. Capital Improvement Planning, cont. (11/15)
5. Economic Development Action Plan Review Update – Scott (11/15)
6. Dirt Road Assessment District (11/15)
7. Street Sign Program (11/15)
8. Street Sweeper contract (11/15) - Leone
9. Hi Dez Kennels/Animal Control Services/Kennel (11/15)
10. Y2K Contingency Plan (11/22) - Cook
11. Grant Program Status Report (11/22)
12. Community Partnership Program Evaluation Criteria – Scott
13. Joint meeting with Museum Association
14. Concert in the Park - Pet Policy – Scott
15. Plan Commission Appointment process - Scott

F:\USERS\AJAMIE\STUDY\SSA101899.doc

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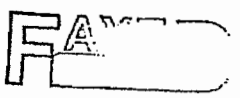
FACSIMILE TRANSMITTAL



TO: Brad Kilger, Town Manager

OF: Town of Yucca Valley

FROM: Naomi Silvergleid, Town Attorney NS

FAX: (760) 228-0084

PAGES: 4

DATE: October 12, 1999

RE: POTENTIAL LIABILITY OF THE TOWN OF YUCCA VALLEY, THE FIRE AND PUBLIC SAFETY AGENCIES RE ROADS WITHIN THE TOWN OF YUCCA VALLEY BUT NOT WITHIN THE TOWN'S MAINTAINED SYSTEM

RECEIVED
OCT 13 1999
Town of Yucca Valley
Town Manager

MESSAGE: You have requested my opinion regarding the following questions:

QUESTION: Can the County of San Bernardino Fire Department and County of San Bernardino Sheriff's Department be held liable if access to citizens within the Town is blocked or delayed because of the condition of the private roads not within the Town's maintained system which roads provide access to the effected persons?

ANSWER: No. The Sheriff's Department and the Fire Department are not charged with the absolute duty to reach and provide services to all persons within the Town. If there is not an adequate turn around, the Fire Department may not be able to effectively provide service. If the Fire Department becomes aware that a property does not have adequate notice, it may inform the property owner but according to the Deputy County Counsel providing legal services to the Fire Department, the department does not take any pro active measures to do so. In addition, the County Sheriff's Department will of course make all reasonable efforts to provide services as quickly as possible. However, neither department could be held liable because of the delay in providing service due to less than optimal access.

QUESTION: Could the Town be held liable because of the failure or delay of the services provided by the Fire Department and/or County Sheriff?

ANSWER: No. Even though the roads are within the Town boundaries, private roads are not within the Town's maintained system and the Town has no duty of maintenance or liability

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for injuries until and unless possession and control has been assumed by the Town. California Streets and Highways Code Section 1806 (attached) provides immunity to the Town for failure to maintain any road until and unless it has been accepted into the Town's street system by resolution or ordinance of the Town Council.

Should you have any questions regarding this, please feel free to contact me. Thank you.

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IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (909) 784-3800 AND ASK FOR TRACI.

§ 1177. Certificate of election results; effect of unfavorable vote

Cross References

Election officers, see Elections Code § 12301 et seq.

§ 1181. Contents of election notice

Cross References

Precinct boards, see Elections Code § 12100 et seq.

§ 1182. Conduct of election; form of proposition

Cross References

Form of ballots, see Elections Code § 13100 et seq.; Government Code § 29605.

Chapter 5.5

THE CARE AND PROTECTION OF COUNTY HIGHWAYS

Article 1

GENERAL PROVISIONS

§ 1460. Definitions

Notes of Decisions

Construction and application 1

county highway without first granting a franchise to the district. 76 Op.Atty.Gen. 176, 8-25-93.

1. Construction and application

A county may issue an encroachment permit to an irrigation district to lay water pipes along or under a

Article 2

PERMIT PROVISIONS

§ 1460. Issuance of permits; authorized acts

Notes of Decisions

Encroachment 2

county highway without first granting a franchise to the district. 76 Op.Atty.Gen. 176, 8-25-93.

2. Encroachment

A county may issue an encroachment permit to an irrigation district to lay water pipes along or under a

§ 1463. Permit provisions; relocation or removal of encroachments or facilities

Notes of Decisions

Improvement 1

provement" of highway within meaning of permit so as to require district to pay for line relocation necessitated by toll road construction; district's facilities were first in place, it was toll road project which necessitated relocation of these facilities, and none of improvements to highway necessitated relocation of district's facilities. County of Orange v. Santa Margarita Water Dist. (App. 4 Dist. 1996) 52 Cal.Rptr.2d 2, 44 Cal.App.4th 189, rehearing denied, review denied.

1. Improvement

Transportation joint powers agency's construction of toll road, intersecting county highway underneath which water district's water and sewerage lines were located pursuant to county encroachment permit, was not "im-

Chapter 6

OBSTRUCTIONS AND INJURIES TO COUNTY HIGHWAYS

Section
1492.5. Survey monuments; preservation, reference or replacement.

§ 1492.5. Survey monuments; preservation, reference or replacement

Survey monuments shall be preserved, referenced, or replaced pursuant to Section 8771 of the Business and Professions Code.

(Added by Stats.1994, c. 458 (A.B.1414), § 11.)

Division 2.5

CITY STREETS

Chapter Section
5. Golf Cart Transportation Pilot Program 1930
6. Golf Cart Transportation Program 1950

Chapter 1

CONSTRUCTION AND MAINTENANCE

Section
1806. Acceptance of road or street by governing body.
1810.5. Survey monuments; preservation, reference or replacement.

§ 1806. Acceptance of road or street by governing body

(a) No city shall be held liable for failure to maintain any road until it has been accepted into the city street system in accordance with subdivision (b) or (c).

(b) Except as provided by Section 989, or by Section 57329 or 57386 of the Government Code, no public or private street or road shall become a city street or road until the governing body, by resolution, has caused the street or road to be accepted into the city street system * * *.

(c) In lieu of the procedure set forth in subdivision (b), the governing body of a city may, by ordinance, designate a city officer to accept, on behalf of the governing body, streets and roads or portions thereof, into the city street system and to record conveyances to the city of real property interests for street and road uses and purposes. The designee shall, prior to recording any conveyance under this section, affix a certificate to the instrument stating the acceptance into the city street system and designating the name or number, or both, of the city street or road.

(Amended by Stats.1991, c. 531 (S.B.1056), § 4; Stats.1993, c. 1105 (S.B.405), § 26.)

Historical and Statutory Notes

1991 Legislation

Section 6 of Stats.1991, c. 531 (S.B.1056), provides:

"It is the intent of the Legislature to abrogate the holding of the Court of Appeal in Rink v. City of Cupertino, 216 Cal. App. 3d 1052, to the extent that the holding would cause a road or highway which was part of a county road system to remain within the county road system after the territory in which the road or highway is situated becomes the territory of a city through annexation or incorporation proceedings. It is, and always has been, the intent of the Legislature that roads or highways which have been accepted into a county road system pursuant to Section 941 of the Streets and Highways Code, and which are situated in an area which is subsequently incorporated or annexed to a city, be included within the city street system upon that incorporation or annexation. Accordingly, Sections 1 to 4, inclusive, of this act are intended to clarify existing law without substantive change."

The Senate Daily Journal of Sept. 11, 1991 contained the following letter dated Sept. 11, 1991, from Senator Bergeson regarding the intent of S.B.1056 (Stats.1991, c. 531):

"Dear Rick: Yesterday the Senate concurred in the Assembly amendments to my Senate Bill 1056. To avoid any confusion over the Legislature's intentions in enacting SB 1056, I request that this letter be printed in the Senate Daily Journal.

P.303

"The Assembly amendments of August 20, 1991 deleted the proposed addition of a new Section 835.6 to the Government Code. That deletion should not be interpreted as an attempt by the Legislature to change the law on tort liability. As expressed in Section 5 of the bill, the intent of SB 1066 is to restore the annexation laws to their status before the *Rink* decision. Accordingly, the bill does not affect the current law on tort liability.

"I appreciate your cooperation in this matter."

1993 Legislation

Short title, legislative findings and declarations for Stats.1993, c. 1195 (S.B.405), see Historical and Statutory Notes under Government Code § 4201.

Law Review and Journal Commentaries

California sidewalks: A comprehensive scheme for determining municipal and abutter liabilities, 31 Santa Clara L.Rev. 461 (1991).

Notes of Decisions

Acceptance, generally 6
Conditional acceptance 7
Maintenance 5
Municipal land 8
Offer to dedicate 10
Rejection 9

5. Maintenance

When city annexed residential area, it did so subject to its explicit power not to accept into its city street system any roadway that might not meet safety, engineering, soils, and other feasibility standards for city streets; thus, city was not required to maintain roads in that residential area that had not been accepted into city street system by resolution, even though these roadways were dedicated and accepted as county highways prior to annexation. Rink v. City of Cupertino (App. 6 Dist. 1989) 266 Cal.Rptr. 404, 216 Cal.App.3d 1362, review denied.

6. Acceptance, generally

Precise language of statute which provides immunity to city for failing to maintain road until road has been accepted into city street system need not be found in resolution wherein city accepts road into system in order to indicate acceptance of road. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal. App.4th 717.

7. Conditional acceptance

Subdivision Map Act allows conditional acceptance of streets proposed to be dedicated to city, and conditional nature of public entity's acceptance prevents creation of public liability for street until dedication is unconditionally accepted. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal.App.4th 717.

8. Municipal land

When city dedicates its own land for public use, no acceptance by city is necessary in order for city to be responsible for maintenance of land. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal. App.4th 717.

Determination that street was included in city's street system and, therefore, that city was liable for failing to maintain street was supported by evidence that city charter regulating manner in which city can open public streets was complied with when city and port passed resolutions which resulted in city dedicating its property for use as public street, naming street, and opening street for public use. Copeland v. City of Oakland (App. 1 Dist. 1993) 23 Cal.Rptr.2d 719, 19 Cal.App.4th 717.

9. Rejection

County's right, title and interest in portion of closed road lying within boundaries of city vested in city upon its incorporation, although city had specifically rejected including road in its street system following incorporation. Re-Open Rambla, Inc. v. Board of Sup'rs (App. 2 Dist. 1996) 46 Cal.Rptr.2d 822, 39 Cal.App.4th 1499, rehearing denied, review denied.

10. Offer to dedicate

Offer to dedicate interest in land to public for public use may be inferred from owner's long acquiescence in public use of property under circumstances which negative idea that use was under license or from adverse and continuous public use; offer, however, must be accepted by public, and acceptance may be formal, as by resolution or ordinance, or by user. Re-Open Rambla, Inc. v. Board of Sup'rs (App. 2 Dist. 1996) 46 Cal.Rptr.2d 822, 39 Cal. App.4th 1499, rehearing denied, review denied.

§ 1810.5. Survey monuments; preservation, reference or replacement

Survey monuments shall be preserved, referenced, or replaced pursuant to Section 8771 of the Business and Professions Code.

(Added by Stats.1994, c. 458 (A.B.1414), § 12.)

Chapter 5

GOLF CART TRANSPORTATION PILOT PROGRAM [REPEALED]

Chapter 5, added by Stats.1992, c. 44 (A.B.1229), § 1, comprising §§ 1930 to 1937, was repealed by Stats.1995, c. 334 (A.B.110), § 1.

§§ 1930 to 1937. Repealed by Stats.1995, c. 334 (A.B.110), § 1

Historical and Statutory Notes

The repealed sections, added by Stats.1992, c. 44 (A.B. 1229), § 1, related to a pilot golf cart transportation system program for the City of Palm Desert.

Chapter 6

GOLF CART TRANSPORTATION PLAN

Section
1950. Legislative intent.
1951. Definitions.
1953. Plan adoption; review.
1955. Plan elements.
1957. City or county duties; golf cart lane design; traffic controls.
1959. City or county powers.
1961. Plan contents; golf cart design criteria; permits; safety issues.
1963. Repealed.
1965. Evaluation of programs.
1967. Duration of chapter.

Chapter 6 was added by Stats.1994, c. 598 (S.B.2016), § 1.

The heading of Chapter 6, Golf Cart Transportation Program, was amended by Stats.1995, c. 334 (A.B.110), § 2, to read as it now appears.

Repeal

Chapter 6 is repealed by the terms of Streets and Highways Code § 1967, operative Jan. 1, 2001.

§ 1950. Legislative intent

It is the intent of the Legislature, in enacting this chapter, to authorize * * * any city or county to establish a golf cart transportation * * * plan for a plan area in the * * * city or county. It is the further intent of the Legislature that this transportation plan be designed and developed to best serve the functional travel needs of the * * * plan area, to have the physical safety of the golf cart driver's person and property as a major planning component, and to have the capacity to accommodate golf cart drivers of every legal age and range of skills.

(Added by Stats.1994, c. 598 (S.B.2016), § 1. Amended by Stats.1995, c. 334 (A.B.110), § 3.)

§ 1951. Definitions

The following definitions apply to this chapter:

* * *

(a) "Plan area" means * * * that territory under the jurisdiction of a city or county designated by the city or county for a golf cart transportation plan, including the privately owned land of any owner that consents to its inclusion in the plan.

(b) "Golf cart" means a motor vehicle having not less than three wheels in contact with the ground and unladen weight less than 1,300 pounds which is designed to be and is operated at not more than 25 miles per hour and is designated to carry golf equipment and not more than two persons, including the driver.

(c) "Golf cart lanes" means all publicly owned facilities that provide for golf cart travel including roadways designated by signs or permanent markings which are shared with pedestrians, bicyclists, and other motorists in the plan area.

(Added by Stats.1994, c. 598 (S.B.2016), § 1. Amended by Stats.1995, c. 334 (A.B.110), § 4.)

§ 1953. Plan adoption; review

(a) A city or county may, by ordinance or resolution, adopt a golf cart transportation plan.

* * * (b) The transportation plan * * * shall have received a prior review and the comments of the appropriate transportation planning agency designated under subdivision (a) or (b) of Section 29532 of the Government Code and any agency having traffic law enforcement responsibilities in that city or county.

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M. NEAL SINGER
NAOMI SILVERGLEID

TELEPHONE (909) 784-3800
FAX (909) 781-4083

October 8, 1999

RECEIVED
OCT 12 1999
Town of Yucca Valley
Town Manager

Brad Kilger, Town Manager
Town of Yucca Valley
57090 Twentynine Palms Highway
Yucca Valley, CA 92284

Re:

Dear Brad:

Enclosed please find a memo which I sent you February 20, 1998 regarding Proposed Release of Responsibility for Roadwork and a fairly comprehensive memo sent Shane Stueckle on February 19, 1998 regarding Aspects of Maintenance on Roads not in the accepted and maintained system.

I will cover questions regarding the responsibility of the fire and public safety agencies regarding access shortly.

Very truly yours,

Naomi Silvergleid

NS/tp

Enc.

030

LAW OFFICES

SINGER & SILVERGLEID, INC.

M. NEAL SINGER
NAOMI SILVERGLEID
PATRICK J. SAMPSON

3750 UNIVERSITY AVENUE, SUITE 550
RIVERSIDE, CALIFORNIA 92501

TELEPHONE (909) 784-3800
FAX (909) 781-4083

MEMORANDUM

TO: Brad Kilger, Town Manager
Town of Yucca Valley

FROM: Naomi Silvergleid, Town Attorney N.S

RE: Proposed Release of Responsibility for Roadwork

DATE: February 20, 1998

You have provided me with two purported releases of responsibility for roadwork signed by residents along Elk Trail in Yucca Valley. You have further informed me that Elk Trail along 7849 and 7860 Elk Trail is a private road and not within the Town's publicly maintained system. As you know, after roads have been accepted into the public road system, the Town assumes the affirmative duty of maintenance. At that point abutting property owners have the right of ingress and egress across these roads, including the right to assume their access will be cared for.

However, unless and until the Town accepts roads and streets into the Town's maintained system, it is under no duty whatsoever to maintain the roads. Rather, if the Town elects to maintain or exercise control over roads that are not in the maintained system, not only does it have possible liability exposure if the activity is done in a wrongful or negligent manner or creates a dangerous condition, but also such services could easily constitute a gift of public funds. It appears as if the property owners are requesting that the Town remove certain material which is in the roadway in front of their residences and perhaps obstructs their ingress or egress. For the Town to do so would clearly benefit a small number of property owners by expending Town forces on private property. Such an action would clearly constitute an impermissible gift of public funds.

In addition, if the work was done negligently or created some type of dangerous condition, other users of the street could conceivably attempt to hold the Town liable and any release signed by these two property owners would not bind all other residents and road users.

If you have any other questions regarding this, please feel free to contact me.

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LAW OFFICES

SINGER & SILVERGLEID, INC.

M. NEAL SINGER
NAOMI SILVERGLEID
PATRICK J. SAMPSON

3750 UNIVERSITY AVENUE, SUITE 550
RIVERSIDE, CALIFORNIA 92501

TELEPHONE (909) 784-3800
FAX (909) 781-4083

FAX SENT

FAX MEMORANDUM

To: Shane Stueckle, Community Development Director
Town of Yucca Valley

From: Naomi Silvergleid

Re: Aspects of Dirt Road Maintenance

Date: February 19, 1998

You have requested that I provide information to you regarding two issues: A) potential liability of Town if it maintains roads not in the "accepted and maintained" system; and B) the procedures by which the Town may obtain easements/right-of-ways over roads that are not in the Town's maintained system. In addition, I have recently sent you materials regarding purchase of easement/right-of-way and the eminent domain process. Please refer to that material.

A. 1. Upon incorporation of the Town (or upon annexation of territory in the future to the Town), all right, title, and interest of the County, including the underlying fee ownership (where owned by the county) in and to any County highway within the territory involved, which had been accepted into the County road system pursuant to Streets and Highways Code Section 941 thereupon vest in the Town and thereupon constitutes a Town street (Streets and Highways Code Section 989(a)(1)).

2. After roads and streets have been accepted for dedication and formally accepted as part of the public road system, the Town assumes the affirmative duty of maintenance. At that point, abutting property owners have a right of ingress and egress across dedicated streets, including the right to assume their access will be cared for. When property has become "public" by usage (under common law), it is unreasonable to impose a maintenance burden or liability for injuries until possession and control has been assumed by the Town.

3. Streets and Highways Code Section 1806 provides immunity for failure to maintain any road until and unless it has been accepted into the Town's street system by resolution of the Town Council.

4. If the Town elects to maintain or exercise control by means of either warning signs or regulatory signs on a street or highway offered for dedication (whether it has been formally accepted or not), or dedicated by implication, any maintenance activities will have possible liability exposure if the activity is done in a wrongful or negligent manner or creates a dangerous condition.

5. In addition to the liability exposure if the Town elects to perform maintenance work on private streets or roads, only limited circumstances (e.g., limited emergency repairs under proper circumstances) justify even considering such activity; the providing of regular maintenance services to such streets could constitute a gift of public funds.

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6. If the Town desires to erect street name signs on private nonmaintained roads, an argument can be made that the street name signs are not predominantly for the benefit of the property owners but for the benefit of the general public and public safety departments. Accordingly, an argument could be made that this is not a gift of public funds. Street name signs are not technically regulatory or warning signs (although a creative personal injury attorney could most likely make an argument that they are), and so the Town would not literally be exercising control over those private nonmaintained roads.

Discussion and Analysis

(a) Although dedication of property to a Town or County is completed upon either a formal or informal acceptance by the public, this does not necessarily mean that the public is responsible for maintaining the property, or that the public is necessarily liable for injuries resulting from a dangerous or defective condition on that property. When the property is a street or highway, the Town or County is generally not responsible for the condition of the dedicated property unless there as been an acceptance by an official resolution adopted by the governing body or by a duly authorized officer which accepts the street into the Town or County roadway system for maintenance purposes. On the other hand, for other situations/kinds of properties, the Town is not responsible for maintenance or injury unless the Town has constructed the project as a public work or has in one form or another taken dominion and control over the project, such as performing repairs and maintenance (e.g., storm drain structures, as an example).

(b) In the case of an offer of dedication made by recording a subdivision map under the Map Act, mere acceptance of the map and the dedication offer contained on the map does not, by itself, necessarily impose a maintenance responsibility. Maintenance responsibility normally begins when the street has been accepted formally as part of the Town's road system (Streets and Highways Code Section 1806).

After a street has been accepted for dedication and formally accepted as part of the public road system, then the Town assumes the affirmative duty of maintenance, since the property owners abutting the street have a right of ingress and egress across the dedicated street, and a right to expect their access will be cared for. Failing to properly maintain such dedicated streets can result in liability for injuries occurring as a proximate result of a defective condition.

(c) Streets and Highways Code Sections 989, 57329, and 57385 recognize that upon incorporation or annexation of territory previously in a County to a Town, all roads or highways in that territory which had been accepted into the County road system under Streets and Highways Code Section 941 thereupon become Town streets, and vest in the Town as Town streets--to the extent of the County's prior interest therein--except for those streets which were not accepted into the County road system until after successful annexation or incorporation proceedings were commenced in the manner described in these statutes.

(d) Streets and Highways Code Section 1806 was added by the Legislature to nullify a California Supreme Court decision which imposed liability for a bridge collapse when the County only sent crews to repair a publicly used road, without any evidence even showing the road work occurred. That code section appears to give substantial immunity to the Town from the failure to maintain roads which have not been accepted into the street system either by formal action by the Town Council. However, Section 1806 does not immunize a City of Town from negligent maintenance. Any Town maintenance activity which arguably causes injury, imposes potential liability upon the Town; that risk may accelerate by the extent of such activity.

(e) Furthermore, maintenance or control of a dedicated but not accepted street shows Town dominion and control over the property. Although the immunity statutes described above appear to provide relatively broad protection, one court stated "this same 'control' that would constitute acceptance of a dedication would also bring the property within the definition of 'public property'" (which imposes liability on the Town for dangerous conditions on such property). Ackley v. City, etc. of San Francisco, 11 Cal. App. 3d 108, 113 (1970). Although this language was not directly relevant to the issues in that case, it illustrates some potential risks resulting from significant maintenance activities--which increase as the level and extent of maintenance accelerates.

Also when the Town performs substantial maintenance of a street not formally accepted into the Town's street system, in some cases this may result in a de facto obligation upon the City to continue to maintain the street. If dangerous condition liability threats were imposed upon the City for such roads, then ruts and chuckholes, etc., would be a constant invitation to file suit if damage resulted. The mere threat (whether or not justified) may force continued maintenance so these conditions would not occur.

(f) Also, regular maintenance of private streets not open to the public may well be a gift of public funds; before a private street can be accepted as public property, there must also be an offer of dedication in one form or another (i.e., direct or by operation of law). Generally, unless a public purpose is shown (e.g., valid statutory authorization), public funds may not be used to improve private property. Adequate police power needs should exist to justify its exercise--i.e., emergency, public safety, or other specific authorization.

If in certain instances it is determined that a need exists to provide certain services to non-maintained streets, the risks above discussed would be decreased if, e.g., services were limited to urgency situations--i.e., when streets are impassible to emergency vehicles, and the like; thus, where an immediate threat to health and safety exists, limited activity not occurring on a sustained, continuing basis under those circumstances would be more defensible.

B. Should the Town wish to acquire easement/right-of-ways over roads which are not currently in the Town's maintained system there are several ways to do so.

1. If there are existing offers of dedication on the property which have not been accepted, the Town by Resolution can accept the offers of dedication. Upon acceptance title to the dedicated property passes to the public and the public has the right to use the area for the designated public purposes but the Town is not required to maintain the road or systems until the roads have been formally accepted into the Town's maintained road system. If an offer of dedication has been recently rejected, the Town can rescind the previous rejection and accept the offer of dedication.

2. If the roads are not subject to a formal offer of dedication, it is possible to utilize the theory of implied common law dedication. This would occur if the roads were subject to consistent public use such that the owner(s) knew or should have known of the use of said lands. It is not necessary to have a formal acceptance of the common law dedication, but it is possible. At that point the resolution accepting the common law dedication should specifically state that it is found to be in the public interest to accept the common law dedication for public highway purposes, but that acceptance of the property into the Town maintained road system shall not occur except pursuant to further action by the Town Council determining that the property should become a part of the Town maintained system.

I have enclosed a recent case, Bess v. County of Humboldt, which holds that where there has been sufficient public use for a long period of time under the

belief that the road is a public road, without objection by the owner, and a public agency has maintained the road, there is sufficient evidence of an implied dedication without regard to the intention of the owner.

If you have any other questions or wish additional information, please so inform me.

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor & Town Council
From: Lona Laymon, Town Attorney
Town Manager Recruitment Ad Hoc Committee
Date: July 10, 2014
For Council Meeting: July 15, 2014

Subject: Appointment of Town Manager
Approval of Town Manager Agreement

Recommendation: That the Town Council appoint the selected candidate for Town Manager ("Selected Candidate") effective July 15, 2014 and approve the employment agreement between the Town and Selected Candidate.

Alternatives: That the Town decline to appoint the Selected Candidate as Town Manager and instead provide Staff and the Ad Hoc Committee with alternative directions or proposal for a continuance if needed.

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)

Background: Over the past six months, the Town conducted an internal recruitment for the position of Town Manager and established an Ad Hoc Recruitment Committee to conduct extensive interviews and negotiations with the Town Manager candidates on behalf of the Town Council, and to make recommendations to the Town Council as a result of those meetings and negotiations. The Ad Hoc Recruitment Committee consisted of Councilmembers Leone and Rowe.

The Draft Employment Agreement (attached hereto as Attachment 1) reflects the Ad Hoc Committee's recommended employment agreement form, with possible further input from the full Council, and additional terms to be announced by the Town Attorney during consideration of this item. Blanks in the recommended agreement form and additional Council changes, if any, will be completed prior to execution of the agreement.

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

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

Discussion: The previous form of the Town Manager employment agreement required significant legal updating since portions of the prior agreement were outdated or unclear. Additionally, the Town Council desired to develop an employment agreement that would be fiscally responsible and sustainable, likely resulting in significant reductions in Town Manager compensation and benefits.

The new Town Manager agreement includes the following reductions to Town Manager compensation and benefits, resulting in *at least a* $170,000 net savings to the Town over the term of the agreement in comparison to the former Town Manager employment agreement:

- Potential reduction in base salary from $190,000 to the range of $150,000 - $155,000, as approved in the FY 2014-16 adopted budget.
- Elimination of all Paid Time Off benefits, resulting in a savings to the Town of approximately $11,500/year;
- Reduction of retirement costs, resulting in a savings to the Town of approximately $43,000 over the term of the agreement;
- Elimination of a $600/month car allowance, resulting in a savings to the Town of approximately $7,200/year; replacement with existing fleet vehicle;
- Reduction of indemnification provided to the Town Manager, as permitted by the California Government Code, which will reduce the Town's exposure in the event of administrative proceedings or litigation.
- Enhanced "for cause" termination provision.

Notably, reductions of base compensation from the prior Manager's $190,000/year salary would result in additional cost savings to the Town beyond the $170,000 identified.

As the Council discusses base salary for the Selected Candidate, the following table provides a comparative base salary listing for similar public agency positions within the Morongo Basin.

Agency	Position	Base Salary
Hi-Desert Water District	General Manager	$200,304
City of Twentynine Palms	City Manager	$185,000
Morongo Unified	Superintendent	$175,000
Bighorn Desert View WA	General Manager	$135,000
Joshua Basin Water Dist.	General Manager	$128,000

The proposed agreement covers the terms and conditions of the Selected Candidate's employment, with a start date of July 15, 2014. The agreement is for a three (3) year term at a base annual starting salary that will be determined by the Council in closed session and announced by the Town Attorney in conjunction with deliberation on this item.

Fiscal impact: The new Town Manager agreement includes reductions to Town Manager compensation and benefits, resulting in *at least* $170,000 net savings to the Town over the term of the agreement in comparison to the former Town Manager agreement. Reductions of base compensation from the prior Manager's annual $190,000 salary would result in additional cost savings to the Town. All costs associated with the proposed agreement are accommodated in the adopted FY 2014/16 budget.

Attachments: Form of Town Manager Employment Agreement

TOWN OF YUCCA VALLEY
EMPLOYMENT AGREEMENT
For the Position of
TOWN MANAGER

This EMPLOYMENT AGREEMENT ("Agreement") is entered this ___ day of _____, 2014, by and between the TOWN OF YUCCA VALLEY ("Town"), a California general law Town and municipal corporation organized and existing under the laws of the State of California, and [NAME] ("Employee"), an individual.

RECITALS

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

WHEREAS, the Town requires the services of a Town Manager; and

WHEREAS, Employee has the required necessary level of education, experience, skills and expertise to serve as the Town's Town Manager; and

WHEREAS, it is the desire of the Town Council to (i) have Employee perform all of the regular functions of the Town Manager pursuant to the codes and regulations of Town, and (ii) establish the terms and conditions of Employee's services to the Town through this Agreement.

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

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. Town Council hereby appoints and employs Employee as Town Manager for the Town to perform the functions and duties of that position, as described in the Yucca Valley Municipal Code § 2.08.050, the California Government Code, and such other legally permissible and proper duties and functions as the Town Council shall, from time to time, direct or assign. Town reserves the right to amend Municipal Code Chapter § 2.08, including Town Manager functions and duties, as it deems necessary and appropriate, without requiring Employee's acquiescence or an amendment of this Agreement. Employee acknowledges that his duties shall include services to the Successor Agency to the Yucca Valley Redevelopment Agency, since the Town Manager also served as the Executive Director of the Successor Agency to the former Community Redevelopment Agency of the Town of Yucca Valley. Employee further agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position. Employee acknowledges that proper

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

1.3 Absence From Work. Employee shall notify the Town Clerk and the Human Resources Manager as soon as reasonably practicable of any full-day absence from work, and shall specify the reason for absence. In the event Employee must miss a Town Council meeting, he shall provide the Mayor, or in the Mayor's absence, the Mayor Pro Tem, with as much notice as is reasonably practicable.

(a) Employee shall focus his or her professional time, ability, and attention to Town business during the term of this Agreement. Employee shall not spend more than ten (10) hours per month in teaching, counseling, or other non-employer connected business activities without express prior approval of the Town Council.

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

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

1.4 Employment Status. Employee shall serve at the will and pleasure of the Town Council under this Agreement and understands he is an "at will" employee serving at the pleasure of Town Council and subject to termination by the Town at any time, as set forth in Section 3.3 below, without any further right of notice or hearing except as required in Section 4.1(a), including any so-called pre-disciplinary "Skelly" meeting or conference.

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

1.6 Disability or Inability to Perform. In the event Employee becomes mentally or physically incapable of performing the Town Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six (6) months, the Town Council may terminate the Town Manager. If the Town Council elects to terminate Employee due to incapacity, he shall receive severance benefits as provided in Section 4.1(b) and (c) below, so long as he executes and does not revoke a general release of claims.

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

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Base Compensation. For the services rendered pursuant to this Agreement, Employee shall receive base compensation of $_____annually ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Cost of Living Increase. Town agrees to provide a cost of living adjustment to Employee's base salary based on the current year's Los Angeles/Riverside/Orange County Consumer Price Index. For the purposes of this section, the index used shall be the same index series used by Town historically.

2.3 Merit Increase; Annual Salary Review. The Town has the right, but not the obligation, to conduct an annual salary review of Employee concurrently with the annual performance evaluation set forth in Section 5.2, and to offer discretionary merit increases. Following any annual performance evaluation, the Town may increase Employee's base salary by means of a discretionary merit increase. The Town may increase Employee's base salary by one percent (1%) of his base salary, provided Employee's performance evaluation is determined by the Town Council, at its sole discretion, to be "satisfactory" ("meets expectations"). The Town may increase Employee's base salary by up to two-and-one-half percent (2.5%) provided Employee's performance is determined by the Town Council, at its sole discretion, to be "above satisfactory" ("exceeds expectations"). Any action to approve an increase must be approved by a majority vote of the Town Council at a public meeting. The Town Council and/or Employee reserve the right to defer or refuse any or all of any base salary adjustment if either party determines that the fiscal state of the Town warrants such action.

2.4 Reimbursements. Town shall reimburse Employee as follows, with all reimbursements subject to and in accordance with California law and the Town's Employee Reimbursement Policy:

(a) For actual expenses incurred by Employee while attending out-of-town meetings, conferences or seminars related to his employment with Town, although to be eligible for such reimbursement, Employee must have budgeted funds available for such and must present an appropriate receipt therefor;

(b) For the actual cost of other business expenses incurred by Employee in the performance of his duties for the Town upon the presentation of an appropriate receipt therefor, including but not limited to expenses incurred related to business lunch and/or dinner meetings. Town shall not reimburse Employee for any alcoholic beverage expense.

(c) There shall be no reimbursement for commute-related travel expenses.

2.5 No Gifts of Value. The California Political Reform Act, Government Code §§ 81000 *et. Seq.* , which applies to local officials such as Employee, establishes a gift limit on the total value of gifts public officials may receive from a single source during the calendar year. As of January 1, 2013, the annual limit is Four Hundred Forty Dollars ($440.00). Gifts are defined as any payment or other benefit provided to an official that confers a personal benefit for which the official does not provide goods or services of equal or greater value.

Based on the limits imposed by the Political Reform Act, Employee is hereby prohibited from accepting gifts greater than Four Hundred Forty Dollars ($440.00) in a single calendar year from a single source, including but not limited to Town residents, employees, contractors, businesses or anyone seeking to do business with the Town. The Political Reform Act also requires that Employee's receipt of gifts totaling Fifty Dollars ($50.00) or more from a single source during the calendar year be disclosed on a Statement of Economic Interests.

Any public official who violates the gift limit is liable in a civil action brought by the California Fair Political Practices Commission for up to three times the amount of the gift, plus administrative sanctions, including fines of up to Five Thousand Dollars ($5,000.00) per violation.

3.0 TERM

3.1 Commencement & Effective Date. Employee shall commence his services hereunder on July 15, 2014, which shall also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. Town hereby employs Employee for an initial term of three (3) calendar years commencing on the Agreement's Effective Date and continuing to and including July 15, 2017, subject to termination by the Town or by Employee, with or without cause, as hereinafter provided in Section 3.3, at the conclusion of which this Agreement shall automatically terminate. The Term of this Agreement may be extended upon mutual concurrence from the Town and the Employee, as evidenced by a writing signed by both parties. The Town agrees that in the last year of the Agreement, the annual evaluation will be performed at least six (6) months prior to the expiration of the term, and the Agreement may be extended for one or more years at that time by mutual consent of the Parties.

3.3 Termination by Town Council or Employee. The Town Council may terminate this Agreement at any time with or without cause and without prior notice or hearing, except that required in Section 4.1(a). Employee may terminate this Agreement at any time following commencement of services, with or without cause. Employee agrees to the extent possible to provide the Town with reasonable notice of his intent to terminate the Agreement to facilitate the transition process.

Definition of Cause. For the purposes of this Agreement, "cause" for termination shall include, but not be limited to, the following: (1) loss of mental capacity for more than six (6) consecutive months as determined by a court of competent jurisdiction; (2) persistent, habitual or willful neglect of duty; (3) insubordination (which shall be defined as a single or repeated failure to carry out a directive or directives of the Council made by Council as a body); (4) corrupt or willful misconduct in office; (5) willful malfeasance, or conviction of a felony amounting to an act of moral turpitude (a conviction following a plea of *nolo contendere* is deemed a conviction under this Agreement); (6) willful destruction or misuse of Town property; (7) intoxication while on duty, whether by alcohol, prescription or non-prescription drugs, and in the case of prescription drugs, where they are being used in a manner not authorized by Employee's treating physician; (8) unexcused absences of two or more consecutive or intermittent days without an authorized leave of absence; (9) willful political activity involving the support of candidates for Town Council or Charter amendments; (10) theft or attempted theft; (11) financial mismanagement amounting to fraud or purposeful withholding of financial information; (12) material dishonesty; (13) willful violation of Federal, State or Town discrimination and harassment laws concerning race, religious creed, color, national origin, ancestry, physical handicap, marital status, sexual orientation, sex or age concerning either members of the general public or Town employee(s) while acting in the course and scope of employment, while on Town premises or time, (14) willful and unlawful retaliation against any Town officer or employee or member of the general public who in good faith reports, discloses, divulges or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or related directly thereto; (15) willful violation of any conflict of interest or incompatibility of office laws; (16) performance of material outside business interests that conflict directly with the activities and duties as Town Manager, but not including educational or professional training programs conducted by Employee whether for personal financial gain or not; (17) refusal to take or subscribe to any oath or affirmation which is required by law; and (18) willful misconduct as defined in Town of Yucca Valley Municipal Code § 2.08.100, or similar matters.

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

4.0 SEVERANCE

4.1 Severance. Employee shall have the severance rights provided herein. The severance rights provided in this Article 4.0 shall constitute the sole and only entitlement of Employee in the event of termination, and Employee expressly waives any and all other rights except as provided herein. Nothing in this paragraph shall be construed as precluding Employee's right to contest the appropriateness of termination in San Bernardino Superior Court or any court of competent jurisdiction or otherwise enforce the provisions of this Agreement, as provided in Agreement Section 8.7 below.

(a) Termination With Cause. If the Town Council terminates Employee with cause, as defined in Section3.3, the Town shall not be required to make the severance payment provided herein.

(1) Written Statement Describing Cause; Name-Clearing Hearing. In the event Employee is terminated for Cause, the Town shall provide Employee with a written statement describing the Cause and shall offer Employee a name-clearing hearing before the Town Council at a reasonable time upon reasonable notice. The name-clearing hearing shall not delay or prevent the Town from terminating Employee and may therefore take place after the termination has occurred.

(2) No Severance Payment While Under Investigation. In the event Employee is under investigation for any of the foregoing reasons, the Town may withhold part or all of any severance payment afforded Employee, in Section 4.2 below, until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered; provided, however, that the Town may not withhold the severance payment (if any), in whole or in part, beyond twelve (12) months of the initiation of an investigation and/or the filing of charges, whichever shall last occur.

(b) Termination Without Cause. If the Town Council terminates Employee without cause before the expiration of the aforesaid term of employment, the Town shall provide the Employee with a minimum 30-day Notice of Intent to Terminate. Further, the Town shall provide Employee with the shorter of: (1) five (5) months' Salary; or (2) an amount equal to the monthly salary of Employee multiplied by the number of months left on the unexpired term of the contract, provided Employee executes and does not revoke the Severance Agreement, a copy of which is attached hereto as Exhibit A. However, if the unexpired term of the contract is greater than five (5) months, the maximum cash settlement shall be an amount equal to the monthly salary of Employee multiplied by five (5). The payment of any severance shall not occur until thirty (30) business days after the Effective Date of the Severance Agreement and shall occur as specified in Section 4.2 below. In the event Employee declines to execute or revokes the general release of claims, he shall not be paid any severance.

The Effective Date of the Severance Agreement shall be ten (10) calendar days after all parties have signed the Severance Agreement.

In addition, Town shall continue to provide Employee with Town-paid "COBRA" benefits (medical, dental and vision) for a maximum of twelve (12) months, except that if Employee obtains other employment prior to the end of the severance period, such benefits and insurance coverage (excluding severance pay) shall cease on the commencement date of such other employment benefits and insurance coverage.

(c) Termination Without Cause in the Six Months Following An Election. If the Town Council gives notice to terminate Employee without cause during the six (6) months following an election, the Town shall pay employee a lump sum payment equal to four (4) months base salary, in addition to the payment provided in Section 4.1(b), provided he first executes and does not revoke the Severance Agreement, and except as provided in Section 4.1

(d). This provision will offer new Town Council members an opportunity to work with and observe the Employee prior to taking any action.

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

(1) Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months. The severance payments provided by Article 4.0 are limited by this provision [(e.g., if termination occurred with six (6) months left in the term, severance would be equal to the monthly base salary multiplied by six (6) rather than twelve (12), provided Employee executes and does not revoke a general release of claims].

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

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

> "On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:
>
> > (a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.
> >
> > (b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5" (i.e., a cash settlement that exceeds 18 months of the Salary and benefits).

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

4.2 Payment. Half of any severance payment required under this Article shall be paid within ten (10) days following the execution of a Severance Agreement, provided Employee has

not revoked the Severance Agreement. The balance of the Salary payment shall be paid monthly following ninety (90) days after the date of separation.

5.0 PERFORMANCE EVALUATIONS.

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

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

5.3 Written Evaluation. In closed session, the Town Council shall utilize an "Evaluation of Town Manager" form in order to evaluate the performance of Employee to date. The Town Council shall have sole discretion to determine the form of the evaluation form used. Thereafter, the Town Council shall prepare a written evaluation form, memorializing its comments regarding Employee, shall schedule at least one (1) closed session with Employee to deliver and discuss such evaluation, and will include the same in his personnel file within two (2) weeks following the conclusion of the review and evaluation process.

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

6.0 FRINGE BENEFITS AND OTHER COMPENSATION.

6.1 Annual Leave. Where the benefits provisions of the Employee handbook and this Agreement conflict, this Agreement shall control.

(a) Vacation. Employee shall accrue vacation at a rate equivalent to one hundred sixty (160) hours per year, 6.16 hours per pay period. Vacation is accrued on a pro rata basis throughout the year. Upon the Effective Date of this Agreement, Employee's currently accrued vacation shall be carried over.

(1) Vacation Accrual Cap. Vacation may only be accrued to a maximum of forty-five (45) days (360 hours). Employee may not cash out vacation time except upon termination or to provide self-reimbursement for payment of required employee PERS contribution, such option as is available to all affected employees. However, the Town Council may approve a vacation leave accrual above the provided limits or a vacation leave cash out it if is deemed to be in the best interests of the Town.

(2) Full Day Absence. In the event Employee wishes to take two or more consecutive days off, he shall notify the Mayor or in the Mayor's absence, the Mayor Pro Tem. Such notification shall be provided no less than two (2) weeks prior to the absence, whenever practicable. Employee shall also notify the Town Clerk and the Human Resources Manager of any absence.

(b) Sick Leave. Employee shall accrue paid sick leave at the rate of one sick leave day per calendar month, or 3.69 hours per pay period, up to a maximum of twelve (12) sick leave days. Accrued, unused sick leave may be carried over to the next calendar year, and Employee's currently accrued sick leave shall be carried over. Employee, if Employee is eligible under CalPERS, may upon retirement, or if he/she retires within one hundred twenty (120) days of separation, convert unused sick leave to CalPERS service credit.

Unused sick leave is forfeited upon retirement from employment with the Town unless Employee is eligible to convert it to CalPERS service credit.

(1) Full Day Absence. In the event Employee is absent from work due to illness or injury, he shall notify the Town Clerk and the Human Resources Manager of his absence as soon as practicable.

(c) Other Leave. Employee shall accrue on the same basis as other Town Management Employees the maximum level of holiday, and other benefits as given in an equal number to other Department Heads of the Town. Accrued, unused sick leave may be carried over to the next calendar year. Upon retirement, Employee, if eligible under CalPERS, shall have all accrued unused sick leave converted to service credit. Upon termination from employment, Employee's accrued unused sick leave shall be forfeited

6.2 Use of Town-Owned Automobile During Normal Business Hours: The Employee's duties require the use of an existing Town-owned automobile during the duration of this Agreement. Town shall provide Employee with the use of an existing Town-owned vehicle, as well as fuel, maintenance and insurance for said vehicle for Employee's use in the performance of his employment duties and incidental personal use to the extent that such personal use is (i) during normal work hours, *or* (ii) for home/work commuting, *and* (iii) so long as such use does not interfere with Employee's work duties. For purposes of this section, the term "incidental personal use" shall mean brief excursions to/from a primary work place for reasons related to the needs of family, medical/dental, meal, financial or mandatory governmental needs during normal work hours so long as such use does not interfere with Employee's work duties. The following are illustrative of acceptable incidental personal uses of the Town-owned car: (i) short excursions from the work place for the pick-up or drop-off of family members for school, work, medical or extracurricular needs, (ii) short excursions from the

work place for banking, DMV, or similar such personal needs, (iii) short excursions from the work place for meal breaks, and (iv) other short excursions from the work place for reasons that are substantially similar to these listed uses.

Employee shall be responsible for the tax treatment applicable to incidental personal use in accordance with current IRS guidelines.

6.3 Health and Life Insurance. Town agrees to put into force and to make such insurance premium payments for life, health, dental and vision, for Employee and his dependents (defined as Employee's spouse, his natural or adopted children up to age twenty-six (26)), and short and long-term disability income benefits to Employee. Such coverage shall be selected by the Employee from among the group insurance options available to other qualified employees. Notwithstanding the forgoing, the Town agrees that the life insurance provided for the benefit of the Employee's beneficiaries shall be term life insurance in an amount equal to two times (2x) Employee's annual base salary.

(a) In the event the Employee opts out of health insurance coverage, the Town will provide Employee with a medical opt-out payment of $525/month, or Employee may instead opt to roll the medical opt-out payment into his Public Section 457(b) account.

6.4 Other Benefits.

(a) Employee shall receive the same PERS benefit provided to non-sworn department heads, in accordance with applicable law. Employee agrees to pay the employee portion of the PERS premiums. The amount of Employee's share toward PERS benefit shall be set at the same amount as other non-sworn department heads, as follows:

(1) Tier 1: Employees hired before July 1, 2011: 2.7 @ 55

(2) Tier 2: Employees hired before July 1, 2012: 2 @ 60

(3) Tier 3: Employees hired on or after January 1, 2013: 2 @ 62.

(b) Town shall permit Employee to continue in the Town-sponsored 457(b) program and shall contribute _____ of Employee's annual base salary, up to a maximum of $17,500, which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid.

(c) Except as otherwise described in this Article 6, Town agrees to give Employee all other benefits given to other Town Department Heads generally, excepting that Employee is under no circumstances entitled to "paid time off" and/or "personal time off" ("PTO") accrual plan.

7.0 OTHER TERMS – CONDITIONS OF EMPLOYMENT

7.1 Dues, Subscriptions and License Fees. Town agrees to pay for the professional dues and subscriptions necessary for Employee's full participation in national, state, regional and local associations and organizations necessary and desirable for his professional participation,

growth and advancement, and for the good of the Town. Town also agrees to pay for or reimburse Employee for fees necessary to maintain professional licenses in possession of Employee.

7.2 Professional Development.

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

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

7.3 Amendment of Agreement. Town and Employee agree that any amendment to this Agreement shall be in writing, signed by the parties hereto, approved by the affirmative vote of three (3) Town Council members. The Town Council, in consultation with Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are reduced to writing and signed by Employee and the Town Council.

8.0 GENERAL PROVISIONS

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

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

To Town:	To Employee:
Attn: Mayor	**[NAME]**
Town of Yucca Valley	**[ADDRESS]**
57090 Twentynine Palms Highway	**[CITY, STATE, ZIP]**

Yucca Valley, CA 92284

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

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

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

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

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

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

8.7 Choice of Law and Forum For Enforcement: This Agreement is made and entered into in the State of California, and shall be governed, interpreted and enforced under the laws of the State of California. The Parties agree jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms shall exist exclusively in a court or government agency located within the County of San Bernardino, State of California. The Parties further agree this Agreement may be used as evidence in any subsequent proceeding, in which any of the Parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations. This Agreement may not be used for any purpose in the event it is revoked.

8.8 Indemnification. Town shall indemnify Employee only to the extent provided herein. Except as otherwise provided in Government Code sections 995.2, 995.4 and 995.6, Town shall, upon the request of Employee, defend, indemnify and hold harmless Employee

against any civil action or proceeding brought against him in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of Town unless it determines any of the following: (1) the act or omission was not within the scope of Employee's employment; (2) Employee acted or failed to act because of actual fraud, corruption or actual malice; (3) the defense of the action or proceeding by Town would create a specific conflict of interest between Town and Employee. "Specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, as specified by stature or a rule or regulation of the Town.

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

(b) Town will not indemnify Employee for the defense of an action or proceeding in the following circumstances, unless it determines the defense would be in the best interests of the Town and that Employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the Town:

(1) Town will not indemnify Employee for the defense of an action or proceeding brought by the Town to remove, suspend or otherwise penalize Employee, or an appeal to a court from an administrative proceeding by Town to remove, suspend, or otherwise penalize Employee.

(2) Town will not indemnify Employee for the defense of an administrative proceeding brought against Employee, including but not limited to instances where the proceeding is brought on account of an act or omission in the scope of Employee's employment as an employee of Town, unless the Town Council determines the defense would be in the best interests of Town.

(3) Town will not indemnify Employee for the defense of an action or proceeding brought by Town against Employee as an individual, and not in his official capacity, or an appeal therefrom.

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

8.10 Assignment. Neither this Agreement, nor any right, privilege, nor obligation of Employee hereunder, shall be assigned or transferred by Employee without the prior written

consent of the Town. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Town, be null and void and may be considered a material breach hereof.

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

[SIGNATURE PAGE TO FOLLOW]

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

TOWN OF YUCCA VALLEY

Dated: _____

_____
Dr. Robert Lombardo, Town Mayor & Chair of Successor Agency to Dissolved Community Redevelopment Agency of Town of Yucca Valley

[EMPLOYEE NAME]

Dated: _____

_____
[Employee Name]

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM

_____
Lona N. Laymon, Town Attorney