



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** November 12, 2013

From: Joseph Moon, Special Projects Manager **Item No:** 3
Municipal Operations & Contract Services

Subject: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER PERMIT IMPLEMENTATION AGREEMENT
FORMALIZING THE MOJAVE RIVER WATERSHED GROUP

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

RECOMMENDED ACTION:

That the Town Council:

- 1) Approve the National Pollution Discharge Elimination System (NPDES) Stormwater Permit Implementation Agreement with the County of San Bernardino (County) and the cities of Victorville and Hesperia, collectively known as the Mojave River Watershed Group.
- 2) Authorize the Mayor to execute the Agreement.

SUMMARY:

The Mojave River Watershed Group (MRWG) consists of the County of San Bernardino, the cities of Victorville and Hesperia and the Town of Apple Valley. The MRWG was formed in August 2002 in an effort to combine resources to establish compliance with the 2003 Phase II MS4 Permit. Since formation, the member agencies have met monthly to discuss the activities necessary to maintain compliance. Each agency participated equally in cost sharing for the execution of implementation efforts within their jurisdiction areas as it related to drainage impacts to the Mojave River.

The NPDES Stormwater Implementation Agreement was developed to not only establish a formal acknowledgement of the MRWG but to also establish MRWG's responsibilities with respect to compliance with the NPDES stormwater permit.

The NPDES Implementation Agreement specifies that the Town is primarily responsible for implementing the NPDES permit within its jurisdiction but that by entering into this agreement, the member agencies are able to share program costs to implement their respective NPDES programs where practical, so that collectively all member agencies might reduce program costs and increase water quality improvements through cost sharing.

ALTERNATIVES:

Implement all the requirements for the NPDES Phase II Permit independently from the MRWG.

FISCAL IMPACT:

Under the NPDES Implementation Agreement, each agency shall pay costs determined using the formula contained in Appendix A of the NPDES Stormwater Implementation Agreement. The shared cost budget will be assessed annually by the members and the County, acting as Facilitator, will prepare and provide the tentative budget to each member agency for approval prior to implementation of activities described as line items in the budget.

ATTACHMENT:

NPDES Stormwater Permit Implementation Agreement

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
STORMWATER PERMIT IMPLEMENTATION AGREEMENT
MOJAVE RIVER WATERSHED

This Stormwater Permit Implementation Agreement (the "AGREEMENT") is made and entered into by and among the Town of Apple Valley, a municipal corporation ("APPLE VALLEY"), the City of Hesperia, a municipal corporation ("HESPERIA"), the City of Victorville, a municipal corporation ("VICTORVILLE"), and the County of San Bernardino, a political subdivision of the State of California (the "COUNTY").

APPLE VALLEY, HESPERIA, VICTORVILLE, and the COUNTY are hereinafter sometimes collectively or individually referred to as the "MEMBER AGENCIES" or as a "MEMBER AGENCY", respectively.

RECITALS:

WHEREAS, the regulations promulgated under the Federal Water Pollution Control Act (the "Clean Water Act" or "CWA") for Phase II of the U.S. Environmental Protection Agency ("EPA") Stormwater Program require small municipal separate storm sewer systems ("MS4") to obtain National Pollutant Discharge Elimination System ("NPDES") permits to regulate discharges to and from MS4s to surface waters; and

WHEREAS, regulations governing the small MS4 stormwater program were published in the Federal Register on December 8, 1999, as amended; and

WHEREAS, the EPA has delegated enforcement authority to the State of California and the Lahontan Regional Water Quality Control Board (the "REGIONAL BOARD"); and

WHEREAS, the State Water Resources Control Board (the "STATE BOARD") first adopted the Phase II General Permit for the Discharge of Stormwater from Small MS4s in 2003, Water Quality Order No. 2003-0005-DWQ/NPDES NO. CAS000004, and the BOARD renewed the permit on February 5, 2013, by adopting the General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order No. 2013-0001-DWQ/, NPDES No. CAS000004, effective July 1, 2013 (the "GENERAL PERMIT"); and

WHEREAS, the MEMBER AGENCIES have already received coverage under the 2003 Phase II General Permit, and at the time of preparation of this AGREEMENT, the MEMBER AGENCIES are seeking coverage under the GENERAL PERMIT from the STATE BOARD; and

WHEREAS, the MEMBER AGENCIES have been meeting and voluntarily participated in concert to implement their respective NPDES programs where practical, since _____; and

WHEREAS, the MEMBER AGENCIES now choose to enter into this AGREEMENT in order to share program costs to implement their respective NPDES programs where practical, so that collectively all MEMBER AGENCIES might reduce program costs and increase water quality improvements through cost sharing; and

WHEREAS, it is the intent of the MEMBER AGENCIES, having chosen to enter into this AGREEMENT, to allow by later amendment of this AGREEMENT the introduction and inclusion of additional MS4 Phase II Public Agencies into the AGREEMENT as member agencies; and

WHEREAS, it is the intent of the MEMBER AGENCIES to define the conditions and procedures for cost sharing through the AGREEMENT.

NOW, THEREFORE, THE MEMBER AGENCIES MUTUALLY AGREE AS FOLLOWS:

Section 1. Creation of the Mojave River Watershed Group and Management Committee

The Mojave River Watershed Group (the "GROUP") is hereby created, consisting of the MEMBER AGENCIES. The GROUP shall be managed by a Management Committee (the "COMMITTEE").

Section 2. Management Committee

a. COMMITTEE Representatives. The City Manager of each MEMBER AGENCY, or any other person authorized by the MEMBER AGENCY's governing board shall appoint one regular representative to the COMMITTEE and one alternate representative to act in the absence of the regular representative. Concurrently with the execution of this AGREEMENT, each MEMBER AGENCY shall notify the FACILITATOR, as identified in Section 3, below, of its regular and alternative representatives. Each regular representative, or, if the regular representative is not available, his or her alternate representative, will participate in COMMITTEE meetings and provide support to the COMMITTEE as necessary.

b. Additional Public Agencies. The MEMBER AGENCIES acknowledge and agree that the effectiveness of the GROUP may be improved by the inclusion of additional Public Agencies. Upon approval by all MEMBER AGENCIES, additional Public Agencies may join the GROUP on such written terms and conditions as required by the COMMITTEE, including, but not limited to, the provisions of this AGREEMENT

as well as agreed-upon cash contributions for past, present, and/or future work of the GROUP. Upon execution of a written amendment to this AGREEMENT signed by all MEMBER AGENCIES and such additional Public Agency, the additional Public Agency shall become a MEMBER AGENCY and shall appoint its COMMITTEE representatives as provided in Section 2.a. above.

c. Advisory Members. The COMMITTEE may, from time to time, seek the input of a regulatory or special interest agency or agencies, which shall serve the COMMITTEE as an advisory member ("ADVISORY MEMBER"). ADVISORY MEMBERS may be appointed and may be removed at any time and for any reason by a majority vote of the COMMITTEE representatives present at the meeting. An ADVISORY MEMBER shall have no obligation to provide funding and shall have no voting privileges.

d. The REGIONAL BOARD is hereby appointed as an ADVISORY MEMBER.

e. Sub-Committees. The COMMITTEE may establish sub-committees and appoint their members by a majority vote of the COMMITTEE representatives present at the meeting, which shall serve at the pleasure of the COMMITTEE.

Section 3. Committee Facilitator

a. Unless removed or replaced pursuant to Section 3.b., the COUNTY is designated as the Committee Facilitator (the "FACILITATOR"). The costs incurred by the FACILITATOR will be included as part of the expenditures of the COMMITTEE, as provided for in the budget to be approved under Section 8 hereof. FACILITATOR shall organize and facilitate COMMITTEE meetings and annual workshop and shall perform secretarial, clerical, and administrative services in support of such meetings and workshop.

b. The FACILITATOR may be removed or replaced or any task assigned to the FACILITATOR in this AGREEMENT may be reassigned to any other COMMITTEE representative by a majority vote of all representatives on the COMMITTEE and subsequent amendment of this AGREEMENT.

Section 4. Meetings of the Committee

a. Frequency and Location. Regular meetings shall be held at least once a month at locations and times determined by the COMMITTEE. Special meetings may be called at the request of any COMMITTEE representative. The first COMMITTEE

meeting shall be held at the City of Hesperia, City Hall, at 1:30 PM on the third Thursday of the month immediately following approval of this AGREEMENT by all MEMBER AGENCIES, at which time the COMMITTEE will select the time and location for holding subsequent regular meetings.

b. Quorum and Voting. A majority of all the COMMITTEE representatives shall constitute a quorum. Except as otherwise required herein, actions of the COMMITTEE shall be passed and adopted upon the affirmative vote of a simple majority of the COMMITTEE representatives in attendance. One COMMITTEE representative in attendance from each MEMBER AGENCY shall have voting rights. An ADVISORY MEMBER shall not vote. The COMMITTEE may adopt such additional rules and regulations as may be required for the conduct of its meetings and affairs, provided such rules and regulations do not conflict with this AGREEMENT and are in compliance with all applicable federal, state, and local laws and regulations.

c. Meeting Agenda and Minutes. The FACILITATOR shall prepare an agenda and keep, or cause to be kept, minutes of the COMMITTEE meetings, and any materials presented to the COMMITTEE. Copies of said documents shall be made available to the COMMITTEE representatives and upon written request to the FACILITATOR, each ADVISORY MEMBER.

Section 5. Notices

Formal notices provided under this AGREEMENT shall be personally delivered or mailed to the COMMITTEE representatives and the ADVISORY MEMBERS. Address changes for such notices or other communications shall be delivered or mailed to the FACILITATOR for distribution to all appropriate parties.

Section 6. Duties of Committee Membership

a. Program Implementation. Using resources available to the GROUP, which resources include the staff of any MEMBER AGENCY and any consultants, contractors, and vendors hired by a MEMBER AGENCY, the COMMITTEE may perform activities to assist MEMBER AGENCIES in completing their GENERAL PERMIT compliance requirements, including, but not limited to, the following activities:

1. Establish goals, needs and priorities;
2. Develop implementation strategies and plans;
3. Develop comment letters regarding stormwater regulations;

4. Develop model ordinance, policy and compliance documents;
5. Review and provide comments on all studies, reports, request for proposals, proposals, and other documents;
6. Evaluate, prepare and submit grant proposals;
7. Develop model municipal staff training materials and organize training events;
8. Prepare projected budget documents;
9. Prepare annual reports;
10. Assist in the development of annual workshop presentation;
11. Develop and implement a public education and outreach program;
12. Develop and implement monitoring and sampling programs.

b. Notwithstanding anything provided herein, each MEMBER AGENCY is individually responsible for implementing all GENERAL PERMIT requirements within their respective jurisdictions. The COMMITTEE shall not be responsible for ensuring the requirements of the GENERAL PERMIT are implemented on behalf of any MEMBER AGENCY or for ensuring that any MEMBER AGENCY implements programs consistent with the GENERAL PERMIT or recommendations of the COMMITTEE. No MEMBER AGENCY shall be responsible for ensuring the requirements of the GENERAL PERMIT or the recommendations of the COMMITTEE are implemented by any other MEMBER AGENCY. Likewise, nothing provided herein shall change the fact that each MEMBER AGENCY is individually responsible for any and all claims, including but not limited to claims arising under Section 13385 of the Water Code, actions, loses, damages, fines or penalties arising out of its duty to comply with the GENERAL PERMIT within its jurisdiction. This provision shall survive termination of the AGREEMENT, or an individual MEMBER AGENCY's termination from the AGREEMENT.

c. Regarding Section 6.a.6. of the AGREEMENT, the FACILITATOR shall act as the administrator for grant funds awarded through any grant process if allowed by the awarding agency.

Section 7. Cost Share Determination

a. For the fiscal year 2013-2014 and subsequent fiscal years, each MEMBER AGENCY's cost share shall be determined annually according to the methodology provided in Appendix A to this AGREEMENT.

b. Beginning in fiscal year 2014-2015, the FACILITATOR shall prepare and submit a proposed updated cost share percentage, according to the cost sharing plan contained in Appendix A, to each of the COMMITTEE representatives by October 1st prior to the start of the fiscal year. Each COMMITTEE representative shall have forty-five (45) calendar days to approve or object to the FACILITATOR's proposed cost share determination in writing. If the FACILITATOR receives no objections within forty-five (45) calendar days, the proposed cost share percentages shall be considered final and approved. In the event an objection is filed, the basis of the objection shall be presented to the COMMITTEE at the next scheduled meeting if the objection is filed fifteen (15) calendar days before that meeting, otherwise the objection will be scheduled on the following meeting, for consideration by the COMMITTEE. Any change to the proposed cost share percentage shall require approval by a three-fourths (3/4) vote of the COMMITTEE representatives present at the meeting.

Section 8. Budgets

a. The FACILITATOR shall prepare and implement an annual operating budget with the participation of the COMMITTEE. The budget year shall coincide with the fiscal year of the FACILITATOR, July 1st through June 30th.

b. The FACILITATOR shall prepare and submit an annual operating budget for the GROUP for forthcoming fiscal year to each COMMITTEE representative for review by October 1st of each year. Each COMMITTEE representative shall have 60 days for review.

c. During the review period, the COMMITTEE representatives may provide written comments on the budget to the FACILITATOR. The COMMITTEE will consider the written comments and will approve a final budget no later than January 30th of each year. An affirmative response from a majority of the total number of COMMITTEE representatives present at the meeting is required for approval.

d. The budget shall include all anticipated costs and fees for any scope(s) of work developed by the COMMITTEE for the next fiscal year. Costs shall include costs and fees for any consultants or contractors to complete the anticipated scope(s) of work, the cost of materials to be distributed to the public or among the MEMBER AGENCIES, other direct costs, and the administrative costs (actual hourly rate, plus overhead, as calculated annually by the FACILITATOR) and direct expenses to be incurred by the FACILITATOR during the course of performing administrative duties on behalf of the GROUP, and costs incurred by the FACILITATOR in carrying out activities

described in Sections 9, 10 and 11 of this AGREEMENT. The budget shall include a detailed description of all work to be accomplished in the next fiscal year.

e. Financial contributions funding the final budget shall be made by each MEMBER AGENCY according to the cost sharing determination prepared in Section 7 above.

f. The FACILITATOR will prepare and submit a proposed GROUP operating budget for fiscal year 2013-2014 at the first meeting, as specified in Section 4.a. of this AGREEMENT, to the COMMITTEE representatives for review and approval. The review period shall begin on the first business day following the first meeting and conclude thirty (30) calendar days thereafter. During the review period, the COMMITTEE representatives may provide written comments on the budget to the FACILITATOR. The COMMITTEE will consider the draft budget for approval at a subsequent meeting following the conclusion of the thirty (30) calendar day review period. An affirmative response from a majority of the COMMITTEE representatives present at the meeting is required for approval.

Section 9. Contracting

a. The FACILITATOR shall contract with all consultants, vendors or other entities, as recommended and approved by the COMMITTEE. The GROUP understands and agrees that the FACILITATOR's Board of Supervisors, or Board designee, has the sole discretion to approve or disapprove said contracts.

b. The hiring of consultants or contractors, as necessary, to complete a scope of work that has been funded by the final budget shall be in conformance with all standards and regulations established by the FACILITATOR.

c. Any service contract procured by FACILITATOR under Section 9.a. shall include a provision that requires: (1) the consultants, vendors or other entities to indemnify and hold harmless all of the MEMBER AGENCIES; (2) the MEMBER AGENCIES to be named as Additional Insured for all FACILITATOR-required insurance policies except for Workers' Compensation, Errors and Omissions and Professional Liability policies; and (3) the provision of a Certificate of Insurance to the FACILITATOR evidencing the insurance coverage. This Section 9.c. is only applicable to parties to the AGREEMENT that are MEMBER AGENCIES at the time the FACILITATOR approves and executes the service contract.

Section 10. Accounting

a. The responsibilities for payment of all approved budgeted shared costs of materials and services shall be distributed among the MEMBER AGENCIES in accordance with Sections 7 and 8, above.

b. The financial responsibility for this AGREEMENT will be effective on the date this AGREEMENT takes effect.

c. Within sixty (60) calendar days of approval of the fiscal year 2013-14 budget by the COMMITTEE, the FACILITATOR shall invoice each MEMBER AGENCY for their annual cost share for fiscal year 2013-14. Each MEMBER AGENCY shall pay to the FACILITATOR their cost share within thirty (30) calendar days of the date of the invoice.

d. Thereafter, the FACILITATOR shall invoice each MEMBER AGENCY for its annual cost share on, or after, July 1st, the start of each fiscal year. Each MEMBER AGENCY shall pay their cost share within thirty (30) calendar days of the date of the invoice. Each MEMBER AGENCY's payment shall be based on their prorated share of the approved annual budget, reduced for any surplus identified in the prior fiscal year-end accounting.

e. The FACILITATOR shall place all funds received from MEMBER AGENCIES, and any other entities electing to fund work planned by the COMMITTEE, in a separate account. The FACILITATOR shall draw from this account to pay obligations and work approved by the COMMITTEE. Consistent with the final budget, the FACILITATOR may draw funds from this account to pay the FACILITATOR administrative costs. The FACILITATOR shall provide financial statements to COMMITTEE representatives showing the funds placed in the account (including interest earnings), the funds disbursed from the account, the payee of such funds, the work performed with such funds, the date(s) funds were disbursed, the remaining funds in the account, and the status of the prior fiscal year in the fiscal year-end accounting pursuant to Section 10.f. Upon written request from a COMMITTEE representative, the FACILITATOR shall provide financial statements to COMMITTEE representatives indicating the status of the current fiscal year.

f. The FACILITATOR shall prepare a fiscal year-end accounting within ninety (90) calendar days after the end of each fiscal year and distribute copies to the MEMBER AGENCIES for their review. MEMBER AGENCIES shall have forty-five (45) calendar days from the date of their receipt of the fiscal year-end accounting to dispute in writing or concur with the findings. If the cost share payments (including interest earnings) exceed costs during the corresponding fiscal year, the excess funds will carry forward to reduce the billings for the following fiscal year. If, however, the fiscal year program costs exceed the sum of the cost share payments, the FACILITATOR shall

submit invoices to the MEMBER AGENCIES to recover the deficit. The share for each MEMBER AGENCY shall be prorated. Each MEMBER AGENCY shall pay the invoice within sixty (60) calendar days of the date of the invoice.

g. Upon termination of this AGREEMENT, a final accounting shall be performed by the FACILITATOR. If costs exceed the sum of the cost share payments (including interest earnings), the FACILITATOR shall invoice each MEMBER AGENCY for its prorated share of the excess. Each MEMBER AGENCY shall pay the invoice within sixty (60) calendar days of the date of the invoice. If the sum of the cost share payments (including interest earnings) exceed the costs, the FACILITATOR shall reimburse to each MEMBER AGENCY its prorated share of the excess (including any interest earnings remaining), within sixty (60) calendar days of the final accounting.

Section 11. Duration of Agreement

a. Unless otherwise extended by mutual agreement of the MEMBER AGENCIES, the AGREEMENT shall expire one year following expiration of the GENERAL PERMIT, inclusive of any administrative continuances pursuant to section 122.6 of Title 40 of the Code of Federal Regulations, or at such time as the Clean Water Act or the REGIONAL BOARD cease to mandate compliance with the GENERAL PERMIT, whichever occurs first. Notwithstanding the foregoing, each MEMBER AGENCY reserves the right to withdraw from the GROUP at anytime, upon sixty (60) calendar days' written notice to the FACILITATOR. COMMITTEE projects or reports shall be fully funded by the MEMBER AGENCIES at the time the projects or studies are approved by the COMMITTEE for implementation.

b. A withdrawing MEMBER AGENCY will not be allowed refunds for their fiscal year program cost share incurred in the fiscal year in which the MEMBER AGENCY completed their formal withdrawal from the GROUP.

c. If any budgeted funds remain after the completion of the year-end accounting (Section 10.f.) for the fiscal year in which the MEMBER AGENCY completed their formal withdrawal from the GROUP, the MEMBER AGENCY will receive their prorated portion of the excess deposits. The deposit shall be paid to the withdrawn MEMBER AGENCY within sixty (60) calendar days following the completion of the year-end accounting task (Section 10.f.). If costs exceed the sum of the cost share payments (including interest earnings), the FACILITATOR shall invoice the MEMBER AGENCY for its prorated share of the excess. The MEMBER AGENCY shall pay the invoice within sixty (60) calendar days of the date of the invoice.

Section 12. Ownership of Documents

All work or deliverables produced, including, but not limited to, originals prepared by anyone in connection with, or pertaining to, the work of the GROUP, shall become the property in whole and in part of each MEMBER AGENCY, jointly and severally.

Section 13. Assignment

No right, duty, or obligation of whatever kind or nature created herein shall be assigned without the prior written consent of the MEMBER AGENCIES.

Section 14. Effective Date

This AGREEMENT shall become effective when it has been executed by all MEMBER AGENCIES.

Section 15. Counterparts

This AGREEMENT may be executed in original counterparts, which together shall constitute a single AGREEMENT.

Section 16. Relationship of the Parties

This AGREEMENT is not intended and shall not be construed so as to create the relationship of agent, servant, employee, partnership, joint venture, or association, as among the MEMBER AGENCIES, or as between the MEMBER AGENCIES.

Section 17. Waiver Of Rights

The failure by the MEMBER AGENCIES to insist upon strict performance of any of the terms, covenants, or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that the MEMBER AGENCIES may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of this AGREEMENT.

Section 18. Severability

If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

Section 19. Amendment

It is mutually understood and agreed that no addition to, alteration of, or variation of the terms of this AGREEMENT, nor any oral understanding or agreement not incorporated herein, shall be valid unless made in writing, approved by all MEMBER AGENCIES, and executed.

Section 20. Entire Agreement

This document sets forth the entire AGREEMENT between the MEMBER AGENCIES.

Section 21. Recitals

The above recitals are true and correct, and are hereby incorporated into this AGREEMENT by this reference.

Section 22. Legal Action/Costs/Attorney Fees

Where any legal action is necessary to declare any party's rights hereunder or enforce any provision hereof for any damages by reason of an alleged breach of any provisions of this AGREEMENT, each party shall bear its own attorney's fees and costs incurred in conjunction with such legal action regardless of who is found to be the prevailing party. This section shall not apply to those costs and attorney's fees arising from any third party legal action against a party hereto and payable under Section 25, Indemnification and Insurance.

Section 23. No Separate Entity

This AGREEMENT established a framework for MEMBER AGENCIES cooperation on storm water issues. Nothing in this AGREEMENT shall be construed to create an entity separate from the public agencies that join in this cooperative effort.

Section 24. Governing Law

This AGREEMENT will be governed and construed in accordance with laws of the State of California. Any legal action which arises out of or is in any way related to this AGREEMENT shall be brought in the Superior Court of the County of San Bernardino.

Section 25. Indemnification and Insurance

Each party shall indemnify, defend, and hold harmless the other parties to this AGREEMENT from and against any and all liability and expense arising from any act or omission of the indemnifying party, its authorized officers, employees, agents, and volunteers in connection with the performance of this AGREEMENT, including, but not limited to reasonable defense costs, reasonable legal fees, claims, actions, damages, liability, and causes of action for damages of any nature whatsoever; provided however, that no party shall indemnify another party for that party's own negligence or willful misconduct. In the event a party, or parties, to this AGREEMENT is/are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this AGREEMENT, the party, or parties shall indemnify the other party/parties to the extent of its/their comparative fault. Furthermore, if a party attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the parties agree that any alleged negligence of the employee shall not be construed against the employer of that employee. The parties to this AGREEMENT are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability, and Workers' Compensation and warrant that through their programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of their performance under this AGREEMENT. This provision shall survive termination of the AGREEMENT, or an individual MEMBER AGENCY's termination from the AGREEMENT.

Section 26. Breach

Failure to comply with the terms of this AGREEMENT is a breach of this AGREEMENT. If a breach is not cured within ninety (90) days after receiving a notice to cure the breach by a party to this AGREEMENT, the party in breach may be terminated from this AGREEMENT by a majority vote of the COMMITTEE.

Section 27. Notices

All notices shall be deemed duly given if delivered by hand; or five (5) working days after deposit in the U.S. Mail, certified mail, return receipt requested.

[END OF THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates opposite their respective signatures.

TOWN OF APPLE VALLEY,
A municipal corporation

DATE: _____ BY: _____
Curt Emick, Mayor

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIR OF THE BOARD

APPROVED AS TO FORM
Town Attorney

LaVonda Murphy-Pearson, CMC
Town Clerk
Town of Apple Valley, California

BY _____ DATE: _____

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates opposite their respective signatures.

CITY OF HESPERIA, a
municipal corporation

DATE:

BY:

Bill Holland, Mayor

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE MAYOR _____

Melinda Sayre-Castro
City Clerk

APPROVED AS TO FORM
City Attorney

City of Hesperia, California

BY

DATE:

Deputy

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates opposite their respective signatures.

CITY OF VICTORVILLE,
a municipal corporation

DATE: _____ BY: _____

Mike Rothschild, Mayor

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIR OF THE BOARD

Carolee Bates
City Clerk

APPROVED AS TO FORM
City Attorney

City of Victorville, California

BY

Deputy

DATE:

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates opposite their respective signatures.

COUNTY OF SAN BERNARDINO,
a political subdivision of the State of California

DATE: _____

BY: _____

Janice Rutherford, Chair, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIR OF THE BOARD

Laura H. Welch

Clerk of the Board of Supervisors

County of San Bernardino

By: _____

APPROVED AS TO FORM
County Counsel

Deputy

BY

Scott Runyan, Deputy

DATE:

VVCA\0001\DOC\142

APPENDIX A

COST SHARING PLAN

- A. The MEMBER AGENCIES collectively, shall pay the approved total annual cost, as set forth in Sections 7 and 8, pursuant to the formulae set forth in Paragraphs B and C, below.
- B. The MEMBER AGENCY's total annual program cost share (PCS) shall be calculated using three cost factors:
1. *Base*, which represents the percentage of the program costs equally applied to all MEMBER AGENCIES. The base (B) fraction is calculated as follows:

B = 1/N, where N = number of MEMBER AGENCIES
 2. *Relative Population*, which represents the percentage of the program costs based on the relative population of each MEMBER AGENCY. Relative population (RP) of each MEMBER AGENCY shall be calculated annually from annual population estimates issued by the California Department of Finance (E-1 Table).

RP_i = (P_i/P_{total}), where

RP_i = relative population of MEMBER AGENCY(i)

P_i = population of MEMBER AGENCY(i)

P_{total} = total population for area covered by the GENERAL PERMIT
 3. *Relative Land Area*, which represents the percentage of the program costs based on the relative land area of each MEMBER AGENCY. Relative Land Area (RLA) shall be calculated as follows:
 - a. The calculation of relative land area within each MEMBER AGENCY's jurisdiction shall exclude land under tribal, state or federal jurisdiction, or any land excluded by the State Water Resources Control Board. Any MEMBER seeking to exclude lands under this Section shall specifically request that exclusion from the COMMITTEE by providing the request in writing along with necessary documentation no later than September 1st to be considered for inclusion in the next year's annual budget. The requesting MEMBER AGENCY has the burden of proving entitlement to any exemption so requested. The COMMITTEE shall approve such exclusion by a simple majority vote of all MEMBER AGENCIES.
 - b. The method for calculating relative land area shall be determined from the Assessor's Parcel data provided by the COUNTY Information Services Department.

$RLA_i = (L_i/L_{total})$, where

RLA_i = relative land area of MEMBER AGENCY(i)
 E = land area of MEMBER (i), less excluded lands
 L_{total} = total land area under permit jurisdiction

C. The MEMBER AGENCY’s total annual program cost share (PCS_i) is calculated as follows:

$$PCS_i = [(B * X_i * AB_i) + (RP_i * Y_i * AB_i) + (RLA_i * Z_i * AB_i)]$$

Where,

PCS_i = MEMBER AGENCY’s cost share

AB_i = Annual budget approved by the GROUP

B = Base fraction for each MEMBER AGENCY
 X_i = Percentage apportioned to the base for PC

RP_i = Relative population of MEMBER AGENCY(i)

Y_i = Percentage apportioned to relative population for PC

RLA_i = Relative land area of the MEMBER AGENCY(i)
 Z_i = Percentage apportioned to relative land are for PC

Table 1. Budget Year [DATE]			
	Percent of the Program Cost Apportioned to each Cost Factor		
	Base (X_i)	Relative Population (Y_i)	Relative Land Area (Z_i)
Program Cost (PC)	40%	30%	30%