

EXHIBIT 1

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

COOPERATIVE AGREEMENT WITH COUNTY OF SAN BERNARDINO FOR FUNDING THE DESIGN AND CONSTRUCTION OF THE YUCCA LOMA ROAD REGIONAL STORM DRAIN FACILITY

Summary Statement:

The Town of Apple Valley has received a Cooperative Agreement from the County of San Bernardino Department of Public Works regarding financial participation by San Bernardino County Flood Control, Zone 4, for the design and construction of the proposed Yucca Loma Road Regional Storm Drain Facility. At its regularly scheduled semi-annual meeting of May 10, 2011, The Zone 4 Advisory Committee unanimously approved a request for Zone 4 to fund the design and construction of the new Regional Storm Drain Facility that is being proposed as part of the joint Town of Apple Valley/ San Bernardino County/ Victorville Yucca Loma Bridge Corridor Transportation Project. The attached Cooperative Agreement has been prepared by San Bernardino County Flood Control for Town Council consideration, and will provide up to \$3.4 million in Zone 4 funding for the Yucca Loma Road Storm Drain Regional Facility.

Attachments:

Cooperative Agreement
Exhibit 1

Recommended Action:

That the Town Council approve and adopt the attached agreement with the County of San Bernardino for Design and Construction of the proposed Yucca Loma Road Regional Storm Drain Facility and authorize its execution by the Mayor, Town Manager, Town Attorney and Town Clerk.

Proposed by: Engineering Division **Item Number** _____

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

Council Meeting Date: 11/8/11



**San Bernardino County
FLOOD CONTROL DISTRICT**

F A S

STANDARD CONTRACT

FOR OFFICIAL USE ONLY

<input checked="" type="checkbox"/> New	Vendor Code		Dept.	Contract Number				
<input type="checkbox"/> Change	INSERT HERE 23		SC	A				
<input type="checkbox"/> Cancel	IF ENTITY HAS SEAL							
Flood Control District			Dept.	Orgn.	Contractor's License No.			
Contract Representative			Telephone		Total Contract Amount			
Melissa Walker			(909) 387-8120		\$3,400,000			
Contract Type								
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
				\$	\$			
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount		
RFQ	094	094	200	2445	F02378	\$3,400,000		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
						\$		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
						\$		
Project Name			Estimated Payment Total by Fiscal Year					
Yucca Loma			FY	Amount	I/D	FY	Amount	I/D
Storm Drain			11/12	\$3,400,000				

THIS AGREEMENT is entered into in the State of California by and between the San Bernardino County Flood Control District, hereinafter called the DISTRICT, and

Name Town of Apple Valley hereinafter called TOWN

Address 14955 Dale Evans Parkway

Apple Valley CA 92307

Telephone 760-240-7000 Federal ID No. or Social Security No. _____

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WITNESSETH

WHEREAS, the Yucca Loma storm drain is identified as Line C-01 in the Apple Valley West/Desert Knolls Master Plan of Drainage, as shown on ~~Exhibit~~ Exhibit I, attached hereto and incorporated herein by reference; and

WHEREAS, the Yucca Loma storm drain is a planned regional facility and a vital component to the overall Apple Valley watershed system; and

WHEREAS, the **TOWN** desires to construct the storm drain in accordance to the Master Plan of Drainage between the limits of the existing storm drain under Yucca Loma Road to the Mojave River (herein referred to as **PROJECT**); and

WHEREAS, the **PROJECT** is part of the **TOWN's** Yucca Loma Road widening project; and

Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

WHEREAS, the **PROJECT** cost shall not include the Yucca Loma Road widening; and

WHEREAS, upon completion of the **PROJECT**, the **TOWN** shall accept the maintenance and operation of the **PROJECT**; and

WHEREAS, construction costs for the Yucca Loma storm drain are estimated at \$3,300,000, to but not to exceed \$3,400,000; and

WHEREAS, the Zone 4 Advisory Committee considered the **PROJECT** and at its May 10, 2011 Budget Hearing Meeting recommended a District contribution not to exceed \$3,400,000 towards the Project; and

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION I

1.0 TOWN AGREES TO:

- 1.1 Act as lead agency to administer and supervise the Project including advertisement for bids, bid review, contract award, construct the project by contract in accordance with the plans and specifications and construction management for the **PROJECT**.
- 1.2 Pay all **PROJECT** costs exceeding **DISTRICT** share as set forth in Section II, 2.1. The **TOWN**, at its sole discretion, may advance funding for the Project, which shall be reimbursed by the **DISTRICT** as set forth in Section II, 2.3.
- 1.3 Process necessary environmental documents as required and obtain required environment agencies' clearances for construction of the Project.
- 1.4 Submit to the **DISTRICT** contract plans, specifications and the engineer's cost estimate for the **PROJECT** for **DISTRICT** review and approval. **TOWN** shall not commence advertising for **PROJECT** contract bids until **DISTRICT** has approved the contract plans, specifications and engineer's cost estimate for the **PROJECT**.
- 1.5 Upon completion of construction of the **PROJECT**, the **TOWN** shall accept the maintenance and operation of the **PROJECT** improvements.
- 1.6 Provide to the **DISTRICT**, upon completion of the **PROJECT** and acceptance of the **PROJECT** work by the **TOWN** and **DISTRICT**, a final accounting of actual total **PROJECT** cost incurred, and a statement for the **DISTRICT** cost share as set forth in Section II, 2.3.
- 1.7 Retain or cause to be retained for audit by the **DISTRICT** or other government auditors for a period of three (3) years from the date of the final payment, all records and accounts relating to the **PROJECT**.

SECTION II

2.0 DISTRICT AGREES TO:

- 2.1 Fund an amount not to exceed \$3,400,000 for the construction of the **PROJECT**, currently estimated at \$3,300,000. In the event the total cost for construction of the **PROJECT** exceeds the estimated cost **TOWN** shall pay all costs in excess of \$3,400,000.
- 2.2 Promptly review and comment on contract plans, specifications and engineer's cost estimate prepared by the **TOWN**.
- 2.3 Reimburse **TOWN** within thirty (30) days of request of reimbursement and itemized statement, setting forth all actual **PROJECT** costs incurred by **TOWN** to date, and which have not already been paid by **DISTRICT**, together with adequate documentation of said expenditures, submitted pursuant to Sections 1.6. Any remaining costs are to be reimbursed within one (1) year of completion and approval of **PROJECT**.

SECTION III

3.0 IT IS FURTHER UNDERSTOOD AND AGREED:

- 3.1 The Effective Date of Acceptance of the **AGREEMENT** shall be the first date upon which all of the following has occurred: (1) the **TOWN** Council and **DISTRICT** Board have approved the **AGREEMENT**; and (2) the authorized representative of each has signed the **AGREEMENT**; and (3) a fully executed copy of the **AGREEMENT** has been submitted to all **PARTIES**.
- 3.2 All of the **DISTRICT**'s revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds ("Bonds") issued by the **DISTRICT** in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this **AGREEMENT** are subject to the prior pledge of revenues described above. **DISTRICT** payments pursuant to this **AGREEMENT** will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the **DISTRICT** from the operation or ownership of the flood and storm water control and conservation facilities ("Flood Control System") of the **DISTRICT** (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the **DISTRICT** pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the **DISTRICT**, investment income and all other money howsoever derived by the **DISTRICT** from the operation or ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the **DISTRICT**, (b) assessments levied pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the **DISTRICT**.
- 3.3 All payments shall be made via electronic funds transfer (EFT) directly deposited into the **PARTIES** designated checking or other bank account. **PARTIES** shall promptly comply with directions and accurately complete forms provided to process EFT payments.
- 3.4 American Recovery and Reinvestment Act Funding (ARRA).

If this **AGREEMENT** is funded in whole or in part by ARRA funds, **TOWN**, and **TOWN**'s contractors and consultants shall comply with the following provisions:

Use of ARRA Funds and Requirements. This Agreement may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for waiver must be made to the District for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage requirements. The **TOWN** must contact the District contact if they have any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. The **TOWN** will also be required to provide detailed information regarding compliance with the Buy American requirements they have under ARRA. The information may be required as frequently as monthly or quarterly. The **TOWN** agrees to fully cooperate in providing information or documents as requested by the District pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

TOWN may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its contractors/subcontractors also register in the same database. **TOWN** must contact the District with any questions regarding registration requirements.

Schedule of Expenditure of Federal Awards. In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. **TOWN** agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, **TOWN** agrees to separately identify to each subcontractor and document at the time of subcontract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

TOWN may be required to provide detailed information regarding expenditures so that the District may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. **TOWN** agrees to fully cooperate in providing information or documents as requested by the District pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

3.5 Indemnification and Insurance.

Indemnification – The **TOWN** agrees to indemnify, defend (with counsel reasonably approved by **DISTRICT**) and hold harmless the **DISTRICT** and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the **DISTRICT** on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The **TOWN's** indemnification obligation applies to the **DISTRICT's** "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

Insurance. The **TOWN** agrees to require the contractor performing all construction contemplated by this agreement to provide insurance, or self insurance, set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Additional Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming the **DISTRICT**, the **TOWN** and their officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the **DISTRICT** or the **TOWN** to the full extent provided by the policy. Such additional uninsured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.

3.6 Time is of the essence for each and every provision of this **AGREEMENT**

3.7 Since the **PARTIES** or their agents have participated fully in the preparation of this **AGREEMENT**, the language of this **AGREEMENT** shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this **AGREEMENT**.

3.8 No supplement, modification, or amendment of this **AGREEMENT** shall be binding unless executed in writing and signed by all **PARTIES**.

3.9 All notices, approvals, consents or other documents required or permitted under this **AGREEMENT** shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three days after deposit in the United States mail, certified, with first class postage fully prepaid, addressed as follows:

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley CA 92307

San Bernardino County Flood
Control District
825 East Third Street
San Bernardino, CA 92415-0835

3.10 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a **PARTY** shall give the other **PARTY** any contractual rights by custom, estoppel, or otherwise.

3.11 This **AGREEMENT** shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this **AGREEMENT** invalid, illegal, or otherwise unenforceable, the

remaining provisions shall continue in full force and effect, unless the purpose of this **AGREEMENT** is frustrated. Any dispute or action to enforce any obligation under this **AGREEMENT** shall be filed and resolved in the appropriate Superior Court in the County of San Bernardino, California. In the event of litigation arising from this **AGREEMENT**, each **PARTY** to the **AGREEMENT** shall bear its own costs, including attorney's fees. This provision concerning costs shall not apply to costs or attorney's fees relative to sections 1.13 and 3.5 of this agreement.

- 3.12 Except with respect to the **PARTIES'** indemnification obligations contained herein, this **AGREEMENT** shall terminate upon the Effective Date of Completion and final payment by the **DISTRICT** to **TOWN**.
- 3.13 This **AGREEMENT** contains the entire **AGREEMENT** of the **PARTIES** with respect to subject matter hereof, and supersedes all other prior negotiations, understandings or contracts. This **AGREEMENT** may only be modified in writing, signed by all **PARTIES**.
- 3.14 This **AGREEMENT** may be cancelled upon thirty (30) days written notice of any **PARTY**, provided however, that no **PARTY** may cancel this **AGREEMENT** without cause after **TOWN** awards a contract for the professional services described herein.
- 3.15 This **AGREEMENT** may be signed in counterparts, each of which shall constitute an original.

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YUCCA LOMA STORM DRAIN

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the **DISTRICT** by its duly authorized representative and the **TOWN** has caused the same to be executed in its name and on its behalf by its duly authorized representative.

This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of all **PARTIES**.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

► _____
JOSIE GONZALES, Board Chair

Dated: _____

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

Laura H. Welch, Secretary

By _____
Deputy

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to Board for Signature
► _____ Counsel	► _____	► _____
Date _____ <i>Rev 080307</i>	Date _____	Date _____

YUCCA LOMA STORM DRAIN

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the **TOWN** by its duly authorized representative and the **DISTRICT** has caused the same to be executed in its name and on its behalf by its duly authorized representative.

This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of all **PARTIES**

TOWN OF APPLE VALLEY

TOWN OF APPLE VALLEY
(Print or type name of corporation, company, contractor, etc.)

▶ _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title Mayor
(Print or Type)

Dated: _____

Address 14955 Dale Evans Parkway
Apple Valley, CA 92307

Approved as to Legal Form

Attested by Town Clerk

▶ _____
Town Counsel

▶ _____
Town Clerk

Date _____

Date _____

EXHIBIT 1

Existing Region Facilities

EXISTING REGIONAL FACILITY-IMPROVEMENT REQUIRED

APPLE VALLEY WEST/DESERT KNOLLS
MASTER PLAN OF DRAINAGE

RECOMMENDED ALTERNATIVE
MAJOR ALIGNMENTS & DRAINAGE DIVIDES

LEGEND

- PROPOSED REGIONAL FACILITY
- PROPOSED SECONDARY FACILITY
- PROPOSED LOCAL FACILITY
- EXISTING REGIONAL FACILITY-ADEQUATE
- EXISTING REGIONAL FACILITY-IMPROVEMENT REQUIRED
- MOJAVE RIVER FLOODPLAIN
- MOJAVE RIVER FLOODWAY
- WATERSHED BOUNDARY
- REGIONAL FACILITY DRAINAGE DIVIDE
- JESS RANCH BOUNDARY
- Q100 DISCHARGE (C.F.S.) ACCUMULATED WATERSHED (SQ. MI.)

DESIGNED BY	SHEET
DRAWN BY	OF
CHECKED BY	SHEETS
FIELD BOOK	JOB NO.
DATE	87191

W S
WILLIAMSON & SCHMID
CONSULTING CIVIL ENGINEERS & LAND SURVEYORS
1501 Red Hill Avenue • Suite C • Calverton 92000 • Telephone 951-241-1111

