



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** July 26, 2016  
**From:** Brad Miller, Town Engineer      **Item No:** 5  
Engineering Department  
**Subject:** MOJAVE RIVERWALK SOUTH PROJECT - PROJECT NO. 2015-08  
**T.M. Approval:** \_\_\_\_\_      **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

1. That the Town Council review and approve the project plans, specifications and bid documents for the Mojave Riverwalk South Project – Project No. 2015-08.
2. That the Town Council approve the Common Use Agreement, Contract No. 16-23, with the San Bernardino County Flood Control District, subject to approval as to form by the Town Attorney and as to content by the Town Manager.
3. That the Town Council authorize staff to solicit bids for construction of said project.

### SUMMARY:

Plans and specifications for the Mojave Riverwalk South Project No. 2015-08 have been prepared and are ready for approval and advertisement of bids. Staff has reviewed the plans and specifications and is satisfied that they meet the intent of the Town Council for this Project. The Project plans and specifications are available to the Town Council for review, approval and authorization to proceed with advertisement of the Project. Staff recommends that the Town Council review the plans and specifications that are available in the Town Council office, approve the documents and direct staff to proceed with advertising for construction of the Project.

## **BACKGROUND:**

The Town of Apple Valley applied for and received a Active Transportation Program (ATP) grant to construct a 12' wide concrete multi-use trail between Bear Valley Road and Tussing Ranch Road. The Project runs 2.18 miles along the Mojave River beginning at Bear Valley Road at the north and continuing south to Tussing Ranch Road. The pathway will connect Pulte Homes', high-density active retirement housing community, to the Victor Valley College Campus and shopping at Apple Valley Town Center. When all segments are completed, the Mojave Riverwalk Master Plan will provide for full connectivity between Apple Valley through Victorville (via the Bear Valley Road Bridge) and to the Mojave Narrows Regional Park. Mojave Riverwalk South is Apple Valley's efforts to increase the health and safety of our residents. As a practical active transportation project it supports Apple Valley Coalition's "Healthy Apple Valley" comprehensive strategic plan.

Because the Project will be constructed within the San Bernardino County Flood Control's Easement on the District's access road, along the Mojave River's east bank, a Common Use Agreement is required (attached).

## **FISCAL IMPACT:**

On June 30, 2016, the California Transportation Commission (CTC) approved construction funding of \$923,000 for the project. Funding for this project has been appropriated in the Town Council approved 2016-2017 Capital Improvement Projects Budget. There is no immediate fiscal impact with approval of the bid documents and authorization to advertise for bids.

## **ATTACHMENTS:**

1. Location Map
2. San Bernardino County Common Use Agreement

LOCATION MAP





**San Bernardino County  
FLOOD CONTROL  
DISTRICT**

F A S

**FOR OFFICIAL USE ONLY**

<input checked="" type="checkbox"/> New	FAS Vendor Code	Dept.	Contract Number		
<input type="checkbox"/> Change		<b>SC</b>	094	<b>A</b>	
<input type="checkbox"/> Cancel					
ePro Vendor Number			ePro Contract Number		
Public Works – Flood Control			Dept.	Orgn.	Contractor's License No.
Contract Representative			094	094	
Melissa L. Walker, P.E., Chief			Telephone		Total Contract Amount
			(909) 387-7995		\$ 0
Contract Type					
<input type="checkbox"/> Revenue		<input type="checkbox"/> Encumbered		<input type="checkbox"/> Unencumbered	
				<input checked="" type="checkbox"/> Other: Non-Financial CUA	
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
					\$
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		
<b>COMMON USE AGREEMENT FOR MULTI-USE TRAIL SYSTEM</b>			FY	Amount	I/D

THIS CONTRACT 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 Attn: Richard Pedersen  
 Telephone (760) 240 – 7000 Ext. 7352 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.)*

**COMMON USE AGREEMENT**

**WHEREAS, DISTRICT AND TOWN** entered into a Memorandum of Understanding (**MOU**), Contract No. 16-23, on January 12, 2016, in which the parties agreed to cooperate in the development of a multi-use regional community trail system (**TRAIL**) within the **TOWN**, utilizing the **DISTRICT'S** right-of-way easement for the Mojave River and Desert Knolls Wash; and

**WHEREAS, DISTRICT and TOWN** each recognize the benefits of the **TRAIL** to the community residents; and

<i>Auditor-Controller/Treasurer/Tax Collector Use Only</i>	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

**WHEREAS**, the **MOU** stipulated that the development and construction of individual portions of the approved conceptual plans for the **TRAIL** would be accomplished under this separate Common Use Agreement (**CUA**), and subsequent Amendments to this **CUA**, enabling such segments to be added as they are permitted by the **DISTRICT**; and

**WHEREAS**, **TOWN** desires to construct a segment of the **TRAIL** along the east bank of Mojave River from Bear Valley Cutoff Road, southerly to Tussing Ranch Road, an approximate length of 2.18 miles, the location of which is shown as **AREA OF COMMON USE** on the attached map marked as Exhibit "A", and incorporated herein by reference, and covered under **DISTRICT** Permit No. P-42015012, and which improvements are also shown on attached plans, marked as Exhibit "B" (**IMPROVEMENTS**) and incorporated herein by reference; and

**WHEREAS**, **DISTRICT** holds easement rights and operates and maintains a levee on the land upon which the **AREA OF COMMON USE** is located; and

**WHEREAS**, **TOWN**, as of May 12, 2016, was granted by the Superior Court of the State of California, County of San Bernardino, Victorville District, prejudgment possession of the land from the underlying fee owner upon which the **AREA OF COMMON USE** is located; and

**WHEREAS**, upon completion of construction of the **TRAIL** segment currently proposed by the **TOWN**, the **TOWN** desires to operate and maintain the **IMPROVEMENTS**, including all signage on the **TRAIL** side of the River, at no cost to the **DISTRICT**; and

**WHEREAS**, the use of the **TRAIL** as contemplated by this **CUA** shall not interfere with the **DISTRICT'S** use, operation, or maintenance of its facilities along the Mojave River as allowed under its easement rights; and

**WHEREAS**, **DISTRICT** will benefit from the **TOWN's** maintenance of the **IMPROVEMENTS**, resulting in reduced maintenance costs for the **DISTRICT**; and

**WHEREAS**, **DISTRICT** desires to preserve its rights to maintain, construct, and operate flood control and water conservation works within and across the **AREA OF COMMON USE**; and

**NOW, THEREFORE, IT IS UNDERSTOOD AND MUTUALLY AGREED AS FOLLOWS:**

1. **DISTRICT** hereby consents to **TOWN'S** construction, reconstruction, operation, and maintenance of the **IMPROVEMENTS**, at **TOWN'S** sole expense, within the **AREA OF COMMON USE**, provided, however, that no such operation or maintenance shall be effected by **TOWN**, its successors, or assigns, in any manner which may interfere or conflict with any structures, facilities, operations, or uses which **DISTRICT** and any other easement holders have or intends to have upon said lands within the **AREA OF COMMON USE**. **TOWN** shall submit complete plans and request a permit for any proposed occupancy for the **DISTRICT'S** approval. The Flood Control Engineer may withhold the permit in his or her sole discretion if he or she determines that the proposal interferes or conflicts with the **DISTRICT'S** interests, as well as the interests of any current and/or future easement holder(s).
2. **TOWN**, its successors, and assigns, shall assume full responsibility for the design, construction, operation, and maintenance of **IMPROVEMENTS** and shall maintain the **TRAIL** in a safe condition. The **TOWN** shall immediately repair any and all damage to the **TRAIL** that will pose a concern for the safety and well-being of the users of the **TRAIL**, as well as the safety and well-being of **DISTRICT** personnel maintaining, constructing, and operating flood control and water conservation works within and across the **AREA OF COMMON USE**.
3. **TERM**
  - a) The initial term of the **CUA** shall be for twenty (20) years and shall commence on the date this **CUA** is approved by the San Bernardino County Board of Supervisors. The initial term may be extended by the mutual written agreement of the parties for successive five (5) year terms at the end of the initial term and each extended term.

- b) Either party may terminate the **CUA** at any time with one (1) year notice prior to the expiration of the term of this **CUA**.
- c) Upon any such termination by either party or expiration of this **CUA**, **TOWN** shall remove, at its sole expense, all **IMPROVEMENTS** installed by, on behalf of, or under the authority of the **TOWN** within the **AREA OF COMMON USE** and remediate the **AREA OF COMMON USE** to its pre-installation condition. In the event that **DISTRICT** wishes to assume responsibility for the **AREA OF COMMON USE** or the **IMPROVEMENTS** after termination, in the **DISTRICT's** sole discretion, the **DISTRICT** agrees to release **TOWN** from any liability associated with any **IMPROVEMENTS** made by the **TOWN** in the **AREA OF COMMON USE**.
4. **DISTRICT** and **TOWN** agree that the easement rights of **DISTRICT** to use the property to maintain its facilities within the **AREA OF COMMON USE** are pre-eminent, and that the protection of life and property takes precedence over all other usages within the **AREA OF COMMON USE**.
5. Except in emergencies and except for routine maintenance of the **IMPROVEMENTS** by **TOWN**, its agents, employees, contractors, and volunteers, **TOWN** shall give reasonable notice to **DISTRICT** and receive **DISTRICT** approval before performing any work on the **IMPROVEMENTS** in said **AREA OF COMMON USE**. No work, which will, in any way, alter or obstruct the flow of or potential flow of waters within said flood control and water conservation works in and around **AREA OF COMMON USE**, will be allowed without a separate permit from the **DISTRICT**.
6. **DISTRICT** has the continuing right to use and make improvements to its facilities within the **AREA OF COMMON USE**, without any claim for compensation or damage by **TOWN**. **DISTRICT** shall, except in emergencies, give reasonable notice to **TOWN** before performing any work which may affect **IMPROVEMENTS** in the **AREA OF COMMON USE**. **DISTRICT** shall use due diligence to minimize and avoid any damage to the **TRAIL**. **TOWN** shall be responsible for repairing any and all damage to the **TRAIL** in accordance with Section 2 of this **CUA**.
7. **TOWN** agrees to indemnify, defend, (with counsel approved by **DISTRICT** or County of San Bernardino) and hold harmless **DISTRICT** and the County of San Bernardino and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, fines and/or liability arising from the **TOWN'S** negligent acts or omissions which arise from **TOWN'S** use of the **AREA OF COMMON USE**, except where such indemnification is prohibited by law.
8. **DISTRICT** agrees to indemnify, defend (with counsel approved by **TOWN**) and hold harmless the **TOWN** and its authorized officers, employees, directors, managers, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from the **DISTRICT'S** negligent acts or omissions which arise from **DISTRICT'S** preservations, maintenance, construction and operation of the flood control and conservation works within and across said **AREA OF COMMON USE** except where such indemnification is prohibited by law.
9. In the event that **DISTRICT** and/or **TOWN** are found to be comparatively negligent in causing any claim, action, loss, penalty, fine or damage resulting from their respective obligations under this **CUA**, each shall indemnify the other to the extent of its comparative fault.
10. If the **DISTRICT** or the **TOWN** attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the **DISTRICT** and **TOWN** agree that any alleged negligence of the injured employee shall not be construed against the employer of that employee.
11. Insurance – Without in any way affecting the indemnity herein provided and in addition thereto, **TOWN** shall secure and maintain throughout the contract the following types of insurance with limits as shown.

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with two hundred fifty thousand dollars (\$250,000) limits, covering all persons providing services on behalf of **TOWN** and all risks to such persons under this Contract.

Commercial/General Liability Insurance – The **TOWN** shall carry General Liability Insurance covering all operations performed by or on behalf of the **TOWN** providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- Premises operations and mobile equipment.
- Products and completed operations.
- Broad form property damage (including completed operations).
- Explosion, collapse and underground hazards.
- Personal injury.
- Contractual liability.
- \$2,000,000 general aggregate limit.

Additional Named Insured – All policies, except for Workers' Compensation and Professional Liability policies shall contain endorsements naming the **DISTRICT**, the County of San Bernardino and its officers, employees, directors, managers, agents, and volunteers as additional named insured with respect to liabilities arising out of the performance of services or operations hereunder. The additional insured endorsements shall not limit the scope of coverage for the **DISTRICT** or the County of San Bernardino to vicarious liability but shall allow coverage for the **DISTRICT** or the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement from ISO, CG 2010.11 85.

Policies Primary and Non-Contributory – All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the **DISTRICT** and the County of San Bernardino.

Proof of Coverage - The **TOWN** shall immediately furnish certificates of insurance to the **DISTRICT** evidencing the insurance coverage, including endorsements as required above, prior to the commencement or performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire except with thirty (30) days written notice to the **DISTRICT**, and **TOWN** shall maintain such insurance from the time **TOWN** commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this **CUA**, the **TOWN** shall furnish certified copies of the policies and all endorsements.

Insurance Review – The above insurance requirements are subject to periodic review by **DISTRICT** and/or the County of San Bernardino. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of **DISTRICT**. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against **DISTRICT** and/or County of San Bernardino, inflation, or any other item reasonably related to **DISTRICT'S** risk.

Any such reduction or waiver for the entire term of the **CUA**, and any change requiring additional types of insurance coverage or higher coverage limits, must be made by amendment to this **CUA**. The **TOWN** agrees to execute any such amendment within thirty (30) days of receipt.

Subcontractor Insurance Requirements – The **TOWN** agrees to require all parties, subcontractors, or others it hires or contracts with related to the performance of this **CUA** to provide insurance covering the contracted operations with the basic requirements for all contracts in Paragraph 5 and the insurance specifications for all contracts in Paragraph 9, (including waiver of subrogation rights) and naming the **DISTRICT** and the County of San Bernardino as an additional insured. The **TOWN** agrees to monitor and review all such coverage and assumes all responsibility to ensure that such coverage is provided as required herein.

12. Either party may terminate this **CUA** as provided in Section 3b of this **CUA**. Any provisions of this **CUA** can only be amended or modified by written agreement of the **DISTRICT** and the **TOWN**.

This **CUA** shall inure to be the benefit of and be binding upon the successors and assigns of both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused the respective names to be hereunto subscribed and their respective seals to be hereunto affixed by their respective proper officers thereunto duly authorized.

**SAN BERNARDINO COUNTY  
FLOOD CONTROL DISTRICT**

► \_\_\_\_\_  
James Ramos, Board Chairman

Dated: \_\_\_\_\_

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

Laura H. Welch, Clerk of the Board

By \_\_\_\_\_  
*Deputy*

**Town of Apple Valley**

*(Print or type name of corporation, company, contractor, etc.)*

By ► \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Title \_\_\_\_\_  
*(Print or Type)*

Dated: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to Board for Signature
► _____ Counsel: Sophie A. Akins, Deputy County Counsel	► _____ Grant Mann, P.E., Chief of Contracts	► _____ Gerry Newcombe, Director
Date _____	Date _____	Date _____