



Town Council Agenda Report

Date: September 24, 2019 Item No. 3

To: Honorable Mayor and Town Council

Subject: APPROVE JOINT USE AGREEMENT WITH VICTORVILLE FOR MOJAVE RIVER WALK TRAIL

From: Douglas Robertson, Town Manager

Submitted by: Brad Miller, Town Engineer
Engineering Department

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

- A. That the Town Council review and approve the proposed Joint Use Agreement with the City of Victorville to allow the Mojave River Walk to encroach within Town owned property.
- B. That the Town Council authorize the Town Manager to sign said Joint Use Agreement.

BACKGROUND

Since 2003 the City of Victorville and the San Bernardino County Flood Control District have been working on the development of the Mojave River Walk Project. This Trail extends from Bear Valley Road north along the Mojave River Levee and enters the Mojave Narrows Regional Park by way of Yates Road in San Bernardino County. In order to connect the Mojave River Walk Trail to Yates Road, the River Walk Trail must pass through two parcels of land acquired in fee ownership by the Town of Apple Valley. These parcels were acquired in connection with the Yucca Loma Bridge Project. The attached Joint Use Agreement defines the areas to be considered under this Agreement and allows the City of Victorville to construct and maintain the River Walk Trail within those described areas.

ANALYSIS

The Joint Use Agreement has been prepared in cooperation between the Town's and Victorville's respective legal staff, and assigns the City of Victorville with full responsibility

to maintain the facility within Town property. The Town bears no responsibility for costs associated with the construction or maintenance of said facility. Staff has reviewed the documents and is satisfied that they meet the intent of the Town Council for this project. Staff recommends that the Town Council review and approve the documents, and direct the Town Manager to approve the Joint Use Agreement.

FISCAL IMPACT

No fiscal impact in approving the Joint Use Agreement.

ATTACHMENTS

- A. Joint Use Agreement with City of Victorville

Joint Use Agreement (Mojave Riverwalk Project)

This Agreement is entered into this ____ day of _____, 2019 by and between the City of Victorville, a municipal corporation (hereinafter “Victorville”) and the Town of Apple Valley, also a municipal corporation (hereinafter “Apple Valley”).

RECITALS

WHEREAS, Victorville and Apple Valley (sometimes collectively referred to as “Party” or “Parties”) previously entered into various contracts pertaining to the planning and development of the Mojave Riverwalk Project which consists of providing pedestrian and bicycle right-of-way hereinafter referred to as the (“Project”); and

WHEREAS, the Project is located partly within the boundaries of Apple Valley and Victorville and is more fully shown on the map attached hereto as Exhibit “A” and incorporated by this reference herein; and

WHEREAS, Victorville and Apple Valley have previously obtained funding to cause the development and ongoing maintenance of the Project; and

WHEREAS, Apple Valley owns real property, described as APN 0480-031-04 (portion) and APN 0480-031-06 (portion) (“Property”) and the portion shown on Exhibit “B” attached hereto and incorporated by this reference shall be designated the “Common Use Area;” and,

WHEREAS, Apple Valley deems it appropriate to allow Victorville to construct a portion of the Project in the Common Use Area and provide a right-of-access to Victorville in order to facilitate ongoing maintenance and/or repair obligations of the Common Use Area by Victorville; and

WHEREAS, Victorville and Apple Valley desire to enter into this agreement (hereinafter "Agreement") for the rights and obligations for each Party and their joint use of the Common Use Area.

NOW, THEREFORE, in consideration of the forgoing and the mutual promises and covenants set forth herein, the Parties mutually agree as follows:

Section 1.

Apple Valley hereby consents to Victorville's undertaking of certain maintenance and repair obligations with no expense to Apple Valley within the Common Use Area and agrees to allow Victorville to enter and occupy said areas, provided that no such use or occupancy of the Common Use Areas shall be affected by Victorville, its successors or assigns in any manner in which in the opinion of the Town Engineer of Apple Valley may endanger, interfere or conflict with the facilities, operation or uses by Apple Valley. Except as expressly herein set forth, this Agreement shall not in any way alter, modify or terminate any of Apple Valley's rights in the Property or Common Use Area. Victorville acknowledges and agrees that it is not acquiring any interest or estate in the Common Use Area, or the land underlying the Common Use Area, by executing this Agreement, and that no interest or estate in the Common Use Area is being conveyed to it.

Section 2.

Apple Valley agrees to process any and all permits requested by Victorville which are needed to facilitate the maintenance and repair of the Common Use Area which are properly applied for as provided herein and in accordance with local and state laws and regulations, subject to the provisions and conditions of this Agreement.

Section 3.

Victorville agrees to accept and assume full responsibility for the costs of the maintenance and/or repair for the Common Use Area. Victorville shall be responsible to perform maintenance obligations at reasonable intervals and keep the Common Use Area in a safe, clean, neat, orderly and presentable condition. Repairs of the Common Use Area shall be completed in a reasonable amount of time following damage. Victorville shall obey and observe all terms of this Agreement and all applicable laws, ordinances, orders, rules, permits, regulations and requirements relating to the Common Use Area, whether federal, state, or local in origin.

Section 4.

Apple Valley agrees to indemnify and hold harmless Victorville, its officers or employees from any and all claims, actions, losses or liability to the extent resulting from Apple Valley's negligent acts or omissions within the Common Use Area. Victorville agrees to indemnify, defend and hold harmless Apple Valley, its officers, officials, agents, and

employees from any and all claims, demands, causes of action, costs, expenses, liability, losses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of or pertaining to, negligent or wrongful acts, errors or omissions related to Victorville's performance of maintenance and/or repair obligations under this Agreement, including without limitation the payment of all expert witness fees and attorneys' fees and other related costs and expenses.

Each Party shall maintain adequate insurance coverage or self-insure for the individual Party's activities contemplated herein for the duration of this Agreement

Section 5.

This Agreement shall become effective upon the date it is approved by the governing body of both Apple Valley and Victorville and it shall remain in effect while Common Use Areas are used by both Parties for the purposes described herein. This Agreement may be terminated without cause by either Party upon thirty (30) days prior written notice to the other Party.

Section 6.

In the event of any contract dispute hereunder, each Party to this Agreement shall bear its own attorneys' fees and costs regardless of who prevails and the outcome of the dispute.

Section 7.

This Agreement with attachments embodies the whole of the agreement of the Parties hereto. There is no oral contracts contained herein. Except as herein provided, addition

or variation of the terms of the Agreement shall not be valid unless made in the form of a written amendment to this Agreement formally approved and executed by both Parties.

This Agreement may not be assigned without written consent of the Parties

Section 8.

The validity, interpretation, construction and effect of this Agreement shall be in accordance with and be governed by the laws of the State of California. The Parties hereto further agree the sole jurisdiction of venue shall be the County of San Bernardino, State of California.

Section 9.

If one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be judged invalid, unenforceable, void or voidable for any reason whatsoever, by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent provided by law.

Section 10.

This Agreement may be executed in counterparts, when executed each counterpart shall be deemed an original, irrespective of date of execution. Said counterparts shall together constitute one and the same contract.

This Agreement shall adhere to the benefit of and be binding on the success and signatures of both Parties.

The Parties agree and intend that they are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF VICTORVILLE

By: _____

Date: _____

ATTEST:

City Clerk

Date: _____

TOWN OF APPLE VALLEY

By: _____

Date: _____

ATTEST:

Town Clerk

Date: _____

APPROVED AS TO FORM AND CONTENT

City Attorney

Date: _____

APPROVED AS TO FORM AND CONTENT

Town Attorney

Date: _____

Exhibit A to the Joint Use Agreement (Mojave Riverwalk Project)
“Project”

EXHIBIT A

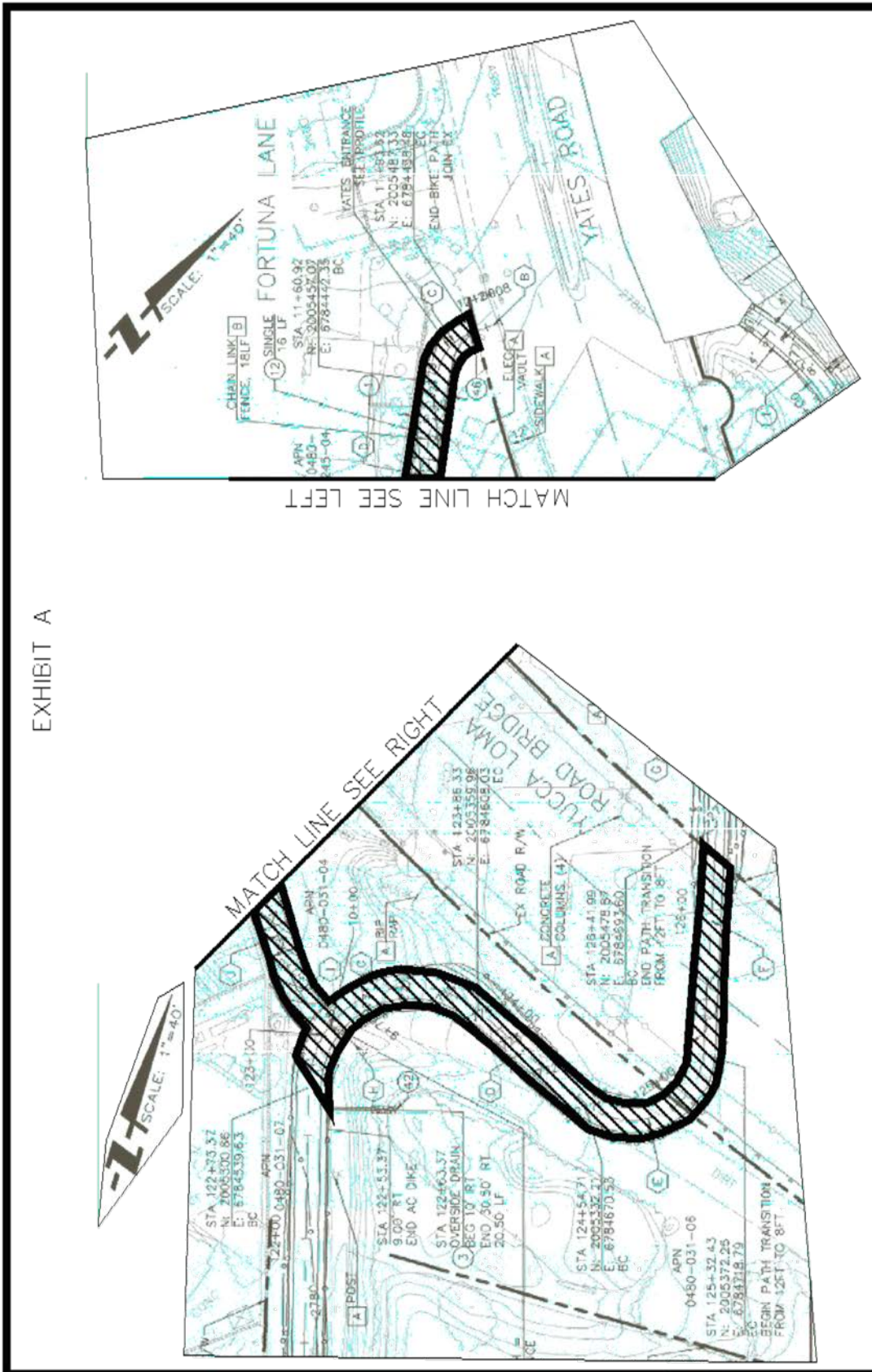
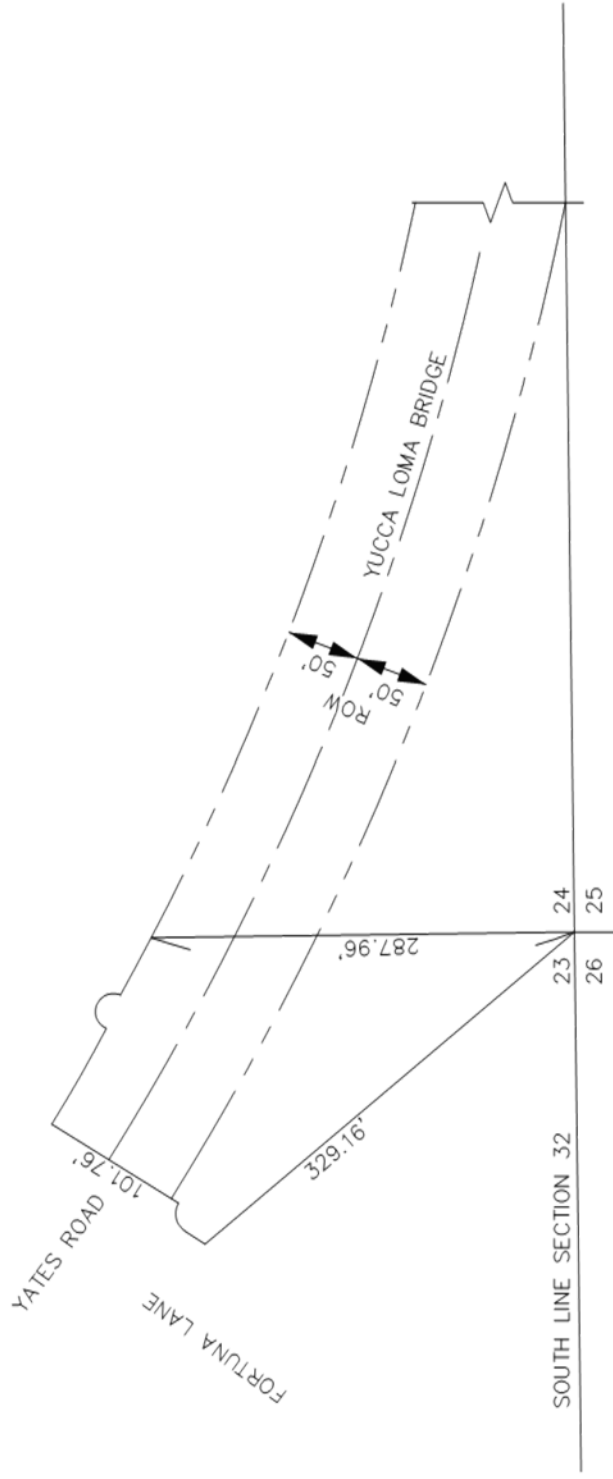


Exhibit B to the Joint Use Agreement (Mojave Riverwalk Project)

Common Use Area

EXHIBIT B
TOWN OF APPLE VALLEY
RIGHT OF WAY



SCALE: 1"=100'