TOWN OF
APPLE VALLEY, CALIFORNIA

AGENDA MATTER

Subject Item:

MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF APPLE VALLEY AND THE COUNTY OF SAN BERNARDINO REGARDING FUTURE DEVELOPMENT WITHIN THE TOWN'S SPHERE OF INFLUENCE

SUMMARY STATEMENT

To assist in providing a better land-use planning relationship between the Town and the County of San Bernardino regarding future development within the Town's Sphere of Influence, at February 2007 Council/Staff workshop, the Council directed staff to draft an agreement between the Town and the County that would allow the Town to have more input and influence in its review of future development within the Sphere area. As part of this effort, the Council also directed staff to amend the General Plan and Pre-zone the land within its Sphere of Influence, which was completed in March 2008.

Chapter 82.22 of the County's Development Code allows special sphere standards to be applied to the cities' spheres of influence. Pre-zoning the Sphere of Influence by adopting equivalent land use designations to the County's designations was the first step in this process. The intent of these actions are to preserve the existing County designations and preserve the Sphere areas from future development that would impact the rural character of the Sphere area. This Memorandum of Understanding (MOU) would provide for the development of special Development Standards to be applied to the Town of Apple Valley Sphere of Influence. These Development Standards would be agreed upon by both the Town and the County, adopted by Ordinance and amended into the County's Development Code. The City of Fontana was the first and only other city to take advantage of this provision in the County Development Code and it MOU with the County will likely be revised by the County Board of Supervisors on the same date the Town's MOU is expected to be considered.

BACKGROUND

The process of drafting and reviewing the MOU has taken over a year to complete. Town staff first forwarded the draft MOU to First District Supervisor Mitzelfelt in May 2007. Staff met again with Supervisor Mitzelfelt and County staff on June 20, 2007 to discuss the agreement, which was forwarded to the County Land Use Services Department for review and comments. In October 2007 staff met again with County staff regarding the MOU, which enabled County Land Use Services Department to forward its comments to Supervisor Mitzelfelt's office and County Counsel in November 2007.

RECOMMENDED ACTION:
Authorize and direct the Mayor, Town Clerk and Town Attorney to execute the Memorandum of Understanding and direct staff to forward the agreement to the County Board of Supervisors for its signature.

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

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

On May 15, 2008, staff met with County staff from the Land Use Services Department, Supervisor Mitzelfelt's office and County Counsel to discuss the overall comments by the County of the draft MOU. County comments were incorporated by Town staff and substantially complete versions of the MOU were forwarded by Town staff to the County in early June 2008. A final draft version was agreed upon by Town staff and County staff on June 26, 2008.

At the earlier referenced May 15th meeting, County staff agreed that Town staff would prepare the Development Standards and the necessary environmental review for compliance with the California Environment Quality Act (CEQA) for the Town's Sphere of Influence. Both the Development Standards and the environmental documentation would then be reviewed by the County, incorporating any agreed upon comments. The Town Council would then adopt by Ordinance the Sphere Development Standards, which would also be adopted by County Ordinance as an amendment to the County Development Code. This process would commence immediately and should take approximately six (6) months to complete depending on the County's turn-around as to reviewing the documents.

In the meantime, the MOU establishes that all discretionary projects within the boundaries of the Town's Sphere of Influence be forwarded to the Town Planning Staff prior to an administrative or Planning Commission hearing for review and comment. Also, the County will encourage applicants to meet with and consult Town staff at the earliest opportunity for the purpose of assuring conformance with the Town of Apple Valley General Plan and Development Code. Staff feels comfortable that the language in the MOU, and the commitment of Supervisor Mitzelfelt and County staff, will enable the Town to have significant influence on future development in the Town's Sphere until the Development Standards are adopted. After the Development Standards are adopted by both the Town and the County, County staff will have clear direction through the parameters and regulations adopted for review, analysis and recommendations on future projects. The Development Standards will also give the County Planning Commission and Board of Supervisors clear regulations for entitling future development in the Town's sphere.

The MOU does not cover the northern territory included in the General Plan and pre-zoned, since it is outside of the Town's Sphere of Influence. Future inclusion of the northern territory area in a Sphere expansion would allow this area to be included within this MOU and the future Development Standards for the Town's Sphere.

Attachments: 1. Draft Memorandum of Understanding

TOWN OF APPLE VALLEY/COUNTY OF SAN BERNARDINO

MEMORANDUM OF UNDERSTANDING
(Sphere of Influence)

This Memorandum of Understanding ("MOU") is entered into between (1) the Town of Apple Valley, a California general law city and municipal corporation ("Town") and, (2) the County of San Bernardino, a political subdivision of the State of California ("County"). The Town and the County are sometimes referred to in this MOU, individually, as a "Party" and, collectively, as the "Parties".

RECITALS

A. The Town, incorporated in 1988, is approximately 78 square miles in size, with an additional 130 square miles of unincorporated area located within the Town's Sphere of Influence ("Sphere"). A map depicting the Town boundaries, and the Sphere areas attached hereto as Exhibit "A", and incorporated herein by reference.

B. The County of San Bernardino has land use authority over the unincorporated area of the County lying within the Town's Sphere and the County may not abrogate that responsibility nor delegate the authority to the Town.

C. Differences currently exist between the Town's General Plan and Development Standards ("Town Development Standards") and the County's General Plan and Development Standards ("County Development Standards"), which relate to development within the Sphere.

D. The Town has amended its General Plan and has pre-zoned the Sphere.. The acreage of the Sphere is approximately 122,921 acres. The Town's General Plan land use designations and pre-zoning adopted by the Town for the Sphere lands are equivalent to the County's land use designations and zoning.

E. The County's Development Code provides that the County may adopt a sphere standards overlay ("Sphere Standards Overlay") in city spheres of influence to allow the implementation of County development standards that more closely conform to city development standards within the specified sphere. Section 82.22.010 of the County Development Code provides that the intent of the Sphere Standards Overlay is to "ensure that the County's approval of a proposed development in a sphere of influence is consistent with the shared objectives of the County and the applicable city where the County has determined it is appropriate to adopt similar standards."

G. Adoption of a mutually agreed upon set of development standards that apply to the Sphere area will ensure that future development in the Sphere area will be compatible with, and closely reflect, the Town Development Standards.

THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

OPERATIVE PROVISIONS

Section 1. Incorporation of Recitals. The Recitals are incorporated into and are a part of the MOU.

Section 2. County and Town's: Development Code and Development Standard Changes; Notification and Consultation on Development Entitlements. The County Land Use Services Department, Advance Planning Division staff and the Town of Apple Valley Economic and Community Development Department, Planning Division staff and successor agencies (at times collectively or individually referred to as "Staff"), shall work cooperatively to prepare a set of development standards for the Sphere ("Sphere Development Standards") that are acceptable to each jurisdiction. The Sphere Development Standards will set out the development requirements for discretionary development permits/approvals within the Sphere to be applied until such time as the Town annexes various portions of the unincorporated Sphere and assumes land use jurisdiction. To foster the continued development of the Sphere consistent with the above stated objectives, the County and the Town agree as follows:

2.1. Staff from both agencies shall outline a process and timeline that shall be agreed upon by the respective Directors of the County Land Use Services Department and the Town of Apple Valley Economic and Community Development Department to complete the Sphere Development Standards for proposed adoption by the Town and inclusion in the County's Sphere Overlay.

2.2. Following the Town's adoption of the Sphere Development Standards, County Staff shall present a proposed Sphere Standards Overlay for the Town of Apple Valley sphere of influence ("Town Sphere Standards Overlay") for consideration by the County Planning Commission and Board, as provided in the County's Development Code at Sections 82.22.010 et. seq. The Town and the County shall comply with any and all obligations related to the California Environmental Quality Act (Public Resources Code Sections 21000, *e t s e q.)* ("CEQA") prior to taking any action to adopt the Sphere Development Standards and the Town Sphere Standards Overlay. The County will use the environmental analysis prepared for the Town to substantiate the actions taken by the County.

2.3. The Town's pre-zoning and adoption of the Sphere Development Standards, together with the County's adoption of Town Sphere Standards Overlay for the Town will provide the procedural mechanism for implementation of this MOU and future development shall be in accordance with Sphere Development Standards.

2.4. The County shall continue to inform Town Staff at the earliest opportunity when it becomes aware of a discretionary development project or concept proposed within the boundaries of the Town's Sphere. The County shall submit all draft information to the Town no less than sixty (60) days prior to the administrative or County Planning Commission hearing at which the development application or other entitlement is to be considered. Final information, including full and complete copies of any and all applications for discretionary development entitlements occurring within the Sphere shall be provided to the Town. Such information shall be provided to the Town no less than thirty (30) days prior to the administrative or County Planning

Commission hearing at which the development application or other entitlement is to be considered. The foregoing shall not operate to modify, waive or abridge any County obligation arising under the CEQA to provide the Town with environmental notice and opportunity to comment as prescribed by CEQA. The Town shall promptly review the application and, within twenty (20) days following its receipt from the County, the Town will provide written comments to the County for its consideration. The County agrees to reasonably consider the Town's comments and, to the extent not in conflict with the County Standards, to incorporate such Town-recommended changes as either modifications to, or conditions of approval, of such entitlement.

2.5 The County shall continue to notify the Town at least than thirty (30) days prior to any public hearing before the Planning Commission or the Board of Supervisors of any proposed changes to any of the Town's Sphere Standards Overlay including General Plan amendments (which includes zoning changes) and Development Code amendments. The Town shall promptly review the application and, within twenty (20) days following its receipt from the County, the Town will provide written comments to the County for its consideration. The County shall review and reasonably respond to any suggested changes, and County staff shall forward such Town-recommended changes for consideration by the County Planning Commission or Board of Supervisors, as applicable. The foregoing shall not operate to modify, waive or abridge any County obligation arising under the California Environmental Quality Act (Public Resources Code Sections 21000, *e t* s *e q*.) ("CEQA") to provide the Town with environmental notice and opportunity to comment as prescribed by CEQA.

2.6 The County shall continue to encourage applicants to meet with and consult with Town Staff at the earliest opportunity for the purpose of assuring, to the extent possible, conformance with the Town of Apple Valley General Plan and Development Code.

2.7 Any project requesting changes to the Sphere Development Standards shall be reviewed by both agencies prior to adoption or the administrative or County Planning Commission hearing for a project.

Section 3. Implementation of Sphere Development Standards. County will implement the Sphere Development Standards prepared jointly by the Town and the County, as provided in section 2.1 through 2.3 herein, for all future discretionary development projects.

Section 4. Effective Date of MOU. This MOU will become effective on the date ("Effective Date") on which it has been approved by both the Town Council on behalf of the Town and the Board of Supervisors on behalf of the County and fully executed counterpart originals have been exchanged between the Parties. The term ("Term") of this MOU shall commence on the Effective Date and shall end upon either Party's election to terminate this MOU, which election may be made at any time and for any reason (or for no reason). Notice of termination shall be given as provided by Section 5. herein.

Section 5. Notices. All notices permitted or required under this MOU shall be given to the respective Parties at the following addresses, or at such other address as the respective parties may provide in writing for this purpose.

Town
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
Attention: Director of Economic & Community Development

County
County of San Bernardino
385 North Arrowhead Avenue
San Bernardino, CA 92415
Attention: Land Use Services Director

Section 6. Integration/Modifications. This MOU contains the entire understanding of the Parties with respect to the matters set forth in this MOU and supersedes any and all prior writings and oral discussions concerning the same. This MOU may not be amended except by a writing duly signed and duly approved by the Town and County. This MOU is not intended to and shall not accrue to the benefit of any person or entity other than the Town and the County.

Section 6. Governing Law. This MOU shall be governed by the procedural and substantive laws of the State of California.

Section 7. Invalidity: Severability. If any portion of this MOU is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Section 8. Counterpart Originals. This MOU may be executed by the Parties in counterparts, all of which together shall constitute a single MOU.

Section 9. Attorney's Fees. If any legal action is instituted to enforce or declare any Party's rights hereunder, each Party, including the prevailing Party, shall bear its own costs and attorneys' fees.

Section 10. Authority to Enter into MOU. Town and County both warrant that the individuals who have signed this MOU have the legal power, right and authority to make this agreement and bind both respective Parties to this MOU.

[Signatures on following pages]

SIGNATURE PAGE TO
MEMORANDUM OF UNDERSTANDING
(Sphere of Influence)

COUNTY:

COUNTY OF SAN BERNARDINO

_____
Paul Biane, Chairman
Board of Supervisors

Dated:_____

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

_____
Town Clerk

DENA M. SMITH

Clerk of the Board of Supervisors

By: _____
Deputy

Dated: _____

APPROVED AS TO LEGAL FORM:

County Counsel

By:_____
Deputy

Dated:_____

CITY:

TOWN OF APPLE VALLEY, a California legal law city and municipal corporation

By:_____
Timothy Jasper, Mayor

Dated:_____

ATTEST:

Dated:_____

APPROVED AS TO LEGAL FORM:

_____

Town Attorney

Dated:_____

July 8, 2008

AGENDA

APPLE VALLEY TOWN COUNCIL

REGULAR MEETING

July 8, 2008

The Town Council's Regular Meeting will begin at 6:30 p.m., with Closed Session items first and the remainder of the Regular Meeting immediately following. The meeting will occur in the Council Chambers located at 14955 Dale Evans Parkway in Apple Valley, California.

PUBLIC PARTICIPATION IS INVITED. Any member of the public may speak on any matter within the subject matter jurisdiction of the Council. If you wish to be heard on any item on the closed session or remaining items of this Regular Meeting agenda, including matters not on the agenda but within the subject matter jurisdiction of the Council, please so indicate by filling out a REQUEST TO SPEAK form and place the request in the Speaker Request Box on the table near the Town Clerk or hand to the Town Clerk at the beginning of the meeting or before the item or matter is heard. No action or discussion shall be undertaken on any item not appearing on the posted agenda, xcept that members of the Town Council or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. Public Comments are limited to three (3) minutes per speaker.

The Town of Apple Valley recognizes its obligation to provide equal access to those individuals with disabilities. Please contact the Town Clerk's Office at (760) 240-7000 two working days prior to the scheduled meeting for any requests for reasonable accommodations.

Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the Town Clerk's Office at 14955 Dale Evans Parkway, Apple Valley, CA during normal business hours. Such documents are also available on the Town of Apple Valley website at www.applevalley.org subject to staff's ability to post the documents before the meeting.

CALL TO ORDER – 6:30 p.m.

ROLL CALL:

COUNCILMEMBERS: Allan_____, Nassif_____, Roelle_____, Mayor Pro Tem Sagona_____, Mayor Jasper_____.

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

CLOSED SESSION

1. Closed Session

A. Personnel Matter – Government Code Section 54957 - Consider Public Employee Appointment/Employment: Title: Town Attorney.

OPENING CEREMONIES

NVOCATION:

PLEDGE OF ALLEGIANCE:

PRESENTATIONS: Certificates of Appreciation – GPAC Members

SPECIAL ANNOUNCEMENTS:

PUBLIC COMMENTS

COUNCILMEMBER COMMENTS AND COMMITTEE/COMMISSION PARTICIPATION

Boards, Committees and Commissions

TOWN COUNCIL ANNOUNCEMENTS

Suggested items for next agenda:

Time, Date & Place for Next Town Council Regular or Special Meeting:

A. Regular Meeting – Tuesday, July 22, 2008, 6:30 p.m. – Council Chambers

CONSENT AGENDA

ecommendation: Adopt all below listed items on the Consent Agenda in one motion. The Consent Agenda is composed of routine non-controversial items of business and will be adopted in whole in one motion unless a request is made by a Council Member to remove a specific item.

2. Approval of Minutes of the Town Council

A.Regular Meeting – June 24, 2008

B. Special Meeting – July 1, 2008

Recommendation:

Approve the subject minutes as part of the consent agenda.

3. Adopt Ordinance No. 385, An Ordinance Of The Town Council Of The Town Of Apple Valley, California, Adopting A Mitigated Negative Declaration, Specific Plan No. 2004-002 (Deep Creek Estates) And Amending The Official Zoning Map By Changing The Zoning Designation From Residential Agriculture (R-A), One (1) Dwelling Per 2.5 To 5.0 Acre, Zone Designation To Specific Plan (S-P) Zone Designation Of An Eighty (80) Acre Parcel Generally Located At The Northwest Corner Of Tussing Ranch Road And Deep Creek Road; Section 7, Township 4 North, Range 3 West Of San Bernardino Meridian; APNs 0434-201-14 And -48.

Recommendation:

dopt Ordinance No. 385.

4. Treasurer's Report – Month of May 2008

Recommendation:

Receive and File

Amendment to Agreement Between the Town of Apple Valley and Charles Abbott Associates for uilding and Safety Services

Recommendation

That the Town Council approve and adopt Amendment #1 to the existing Agreement for Building and Safety Services between the Town of Apple Valley and Charles Abbott Associates (CAA) and authorize its execution by the Town Manager and Town Attorney.

6. Amendment to Agreement Between the Town of Apple Valley and Charles Abbott Associates for Engineering Services

Recommendation:

That the Town Council approve and adopt Amendment #1 to the existing Agreement for Engineering Services between the Town of Apple Valley and Charles Abbott Associates (CAA) and authorize its execution by the Town Manager and Town Attorney.

PUBLIC HEARINGS

7. A Resolution of the Town Council Authorizing a Cost of Living Increase on Trash/Recycling Service

Recommendation:

1. Open the public hearing for Resolution 2008-40

2. Determine whether a majority protest exists, and

3. If no majority protest exists, adopt Resolution 2008-40, revising the trash/recycling user fees for the Town of Apple Valley

LEGISLATIVE MATTERS

REPORTS, REQUESTS AND COMMUNICATIONS

BUSINESS OF THE COUNCIL

8. Measure I -2010-2040 Expenditure Plan for the Victor Valley Subarea

Recommendation:

That the Town Council approve the Expenditure Plan for the Victor Valley Subarea

9. Memorandum of Understanding Between the Town of Apple Valley and the County of San Bernardino Regarding Future Development Within the Town's Sphere of Influence

Recommendation:

Authorize and direct the Mayor, Town Clerk and Town Attorney to execute the Memorandum of Understanding and direct staff to forward the agreement to the County Board of Supervisors for its signature.

10. Selection of Town Council Voting Delegate and Voting Alternate to League of California Cities'

2008 Annual Conference

Recommendation:

Nominate one councilmember as voting delegate and two councilmember's as voting alternates representing the Town of Apple Valley to the League of California Cities' 2008 Annual Conference.

TOWN MANAGER'S COMMENTS & LEGISLATIVE UPDATE

DEPARTMENTAL REPORTS AND BUSINESS:

STAFF REPORTS

CORRESPONDENCE

CLOSED SESSION

Further Closed Session, if necessary and if not completed during the above 6:30 p.m. portion of this agenda, including any or all items described in that portion of this agenda. Reportable actions during closed session will be announced.

ADJOURNMENT