



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** February 14, 2012

From: John Brown, Town Attorney **Item No:** 17

Subject: APPROVAL OF EMPLOYMENT AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND FRANK ROBINSON

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

RECOMMENDED ACTION:

Approve the Employment Agreement between the Town of Apple Valley and Frank Robinson

SUMMARY:

This agreement is being presented to the Town Council for review and approval as a result of Council's recent evaluation of the Town Manager. The terms and conditions of the Agreement were reviewed and approved by the Town Attorney.

**EMPLOYMENT AGREEMENT BETWEEN
THE TOWN OF APPLE VALLEY AND FRANK ROBINSON**

This EMPLOYMENT AGREEMENT (“Agreement”) is made by and between Frank Robinson (“Employee”) and the Town of Apple Valley, a California Municipal Corporation, (“Town”). The Parties hereto agree as follows:

Section 1. Employment.

1.1 The Town agrees to continue to employ Employee as Town Manager and he agrees to continue his employment as Town Manager upon the terms and conditions set forth herein.

1.2 Employee agrees to perform the functions and duties of Town Manager as set forth in the Municipal Code of the Town of Apple Valley and such other functions and duties as may be established or directed by the Town Council. Employee agrees to perform all such functions and duties to the best of his ability and in a lawful, efficient and competent manner.

1.3 Employee agrees that his employment with the Town is at the will and pleasure of the Town Council and that Employee’s employment and this Agreement may be terminated by the Town Council, with or without cause, and without right of appeal or hearing (except as provided in Section 3.4 of this Agreement), at any time.

1.4 (a) The Council agrees that Municipal Code Section 2.08.070 governs its relations with Employee and it agrees to be bound thereby for purposes of this Agreement. Accordingly, said Section 2.08.070 is set forth below and is incorporated into this Agreement.

Relations with Council. The Town Council and its members shall deal with the administrative services of the Town only through the Town Manager, except for the purpose of inquiry, and neither the Town Council nor any member thereof shall give orders to any subordinates of the Town Manager. For purposes hereof, "inquiry" means any and all communications short of giving orders, directions or instructions to any member of the administrative staff. Such members shall give all information reasonably requested by any councilmember. The Town Manager shall take his orders and instructions from the Town Council only when sitting in a duly convened meeting of the Town Council and no individual councilman shall give any orders or instructions to the Town Manager. The Town Council shall instruct the Town Manager in matters of policy. Any action, determination or omission of the Town Manager shall be subject to review by the Town Council. The Town Council may not overrule, change or modify any such action, determination or omission except by the affirmative vote of at least three members of the Town Council.

(b) Town agrees that upon breach of Section 2.08.070 by the Council or an individual Council member that materially interferes with Employee’s performance of his duties under this Agreement, Employee may resign his employment and, subject to the conditions set

forth herein and Section (c), below, shall receive severance pay as if he was terminated by the Town without cause under Section 3.2 of this Agreement. Prior to giving notice of resignation under this Section, Employee shall give written notice to the Council of the alleged breach hereunder within ten (10) days, and give the Council fourteen (14) days to cure said alleged breach. If Council cures the alleged breach, Employee shall have no entitlement to receive severance pay based on his resignation under this Section. If employee resigns, he shall provide the Town sixty (60) days' written notice in advance, unless the Parties agree otherwise. Payment of severance pay under this Section, if any, shall be subject to the requirement in Section 3.2 of this Agreement that Employee execute a release and waiver of any and all claims against Town, it's officers, Town Council Members, employees, and agents, arising out of his employment with Town, and the termination/resignation therefrom, in such form as may reasonably be required by Town.

(c) In the event that the Town disputes Employee's allegation of a breach of Section 2.08.070 or it maintains it has cured any alleged breach of Section 2.08.070, and refuses to pay severance pay upon Employee's resignation, Employee may submit the dispute to binding arbitration. An arbitration claim must be submitted to the Town Clerk within 30 days of the date that the Council notifies Employee of its denial of severance pay under this Section, otherwise the claim is waived. Said arbitration shall be conducted under the Expedited Labor Arbitration Procedures of the American Arbitration Association. The Town shall bear the cost of the arbitrator and related administrative expenses charged by the American Arbitration Association and each party shall be responsible for its own attorneys fees and other costs. The sole issues before the Arbitrator shall be: (1) whether the Council or an individual Council member breached Section 2.08.070 in a way that materially interfered with Employee's performance of his duties under this Agreement and, if so, the Council, upon having been given timely notice of the alleged breach, failed to cure the breach; and, (2) whether said breach was the sole cause of Employee's resignation. An affirmative determination by the arbitrator on both issues shall entitle Employee to severance pay as if he was terminated by the Town without cause under Section 3.2 of this Agreement. A negative determination by the arbitrator on one or both issues shall result in denial of said severance pay. Employee agrees that this arbitration provision shall be Employee's sole and exclusive remedy in the case of a claim that the Town denied severance pay as provided in this Section.

1.5 Except as provided hereinafter, Employee shall not seek or accept employment elsewhere during the Term of this Agreement. Employee may seek and accept employment elsewhere upon being given notice of Termination under the terms of this Agreement or if authorized to do so by the Council.

Section 2. Term of the Agreement.

2.1 This Agreement shall be for a term of three (3) years, beginning February __, 2012 and ending February __, 2015. Subject to the Town's right to terminate this Agreement and Employee's employment at any time pursuant to Section 3 of this Agreement, this Agreement shall automatically be extended for subsequent one (1) year periods unless the Town Council provides written notice to the Employee no less than twelve (12) months prior to the expiration of the current term or an extended term that the Agreement will be terminated. Unless

otherwise provided for by a subsequent written agreement between the Parties, the terms and conditions of this Agreement shall apply to any extended term of this Agreement.

2.2 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of Employee and this Agreement, at any time, subject only to the provisions set forth in this Agreement.

2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the Town, subject only to the provisions set forth in this Agreement.

2.4 Employee agrees to remain in the exclusive employment of the Town during the term of this Agreement, and he shall neither accept other employment nor become employed by any other person, business, or organization during the term of this Agreement without the written approval of the Town Council. As used in this section, the term "employed" shall not be construed to include occasional teaching, writing, or consulting on Employee's time off, which may be undertaken by the Employee, provided they are conducted with persons, businesses, or organizations not within the Town limits. Under no circumstances, however, may Employee engage in outside employment or other activities that present a real or potential conflict of interest with Employee's employment with the Town.

Section 3. Termination and Severance Pay.

3.1 Employee serves at the will and pleasure of the Town Council and may be terminated with or without cause, and without right of appeal or hearing (except as provided in Section 3.4 of this Agreement), at any time. Consequently, nothing in this Agreement shall in any way affect or limit the Town Council's right to terminate the employment of Employee and this Agreement on an at-will basis, with or without cause, and without right of appeal or hearing (except as provided in Section 3.4 of this Agreement), at any time.

3.2 In the event that Employee and this Agreement are terminated without cause, Town agrees to provide Employee with severance pay in a lump sum cash payment equal to twelve (12) months' base salary, less deductions required by law. Further, Town shall pay employee's health insurance continuation coverage premium, provided Employee timely applies for COBRA continuation coverage upon termination of his employment, which payment may be continued for the same duration as his severance payment or until Employee finds other employment, whichever occurs first. Payment of severance pay and health insurance continuation premium payments shall be conditioned upon Employee executing a release and waiver of any and all claims against Town, its officers, employees and agents, arising out of his employment with Town, and the termination thereof, in such form as may reasonably be required by Town. Severance pay and health insurance continuation premium payments shall not be payable unless and until Employee executes such release and waiver and until expiration of all waiver and revocation rights as provided by law at the time of termination of Employee's employment and this Agreement.

3.3 In the event Employee and this Agreement are terminated for cause, Employee shall not be entitled to any severance pay. Termination for cause is defined as follows:

- (a) A willful breach of this Agreement.
- (b) Habitual neglect of duties required to be performed under this Agreement.
- (c) Any acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude.
- (d) Refusal or failure to act in accordance with any directive or order of the Town Council.

3.4 In the event that Employee and this Agreement are terminated for cause, Employee will be presented with written notice of the basis for said cause. Upon receipt of said written notice, Employee, within five (5) business days, may request a hearing before the Town Council. The issue at the hearing shall be limited solely to whether or not there is sufficient evidence to support a finding of termination for cause such that the Employee would not be entitled to any severance pay. Under no circumstances shall the Employee be entitled to reinstatement as a result of such hearing.

3.5 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with Town, subject only to the provisions set forth in this Agreement. In the event the Employee resigns from his position with the Town, then the Employee shall provide the Town sixty (60) days' notice in advance, unless the Parties agree otherwise. In the event the Employee resigns, except as otherwise provided in Section 1.4(b), above, he shall not be entitled to any severance pay, but the Town shall pay the Employee for accrued vacation benefits.

3.6 Notwithstanding any other provision herein, in accordance with Government Code Sections 3511.2 and 53260, the cash payment that Employee may receive in the event of the termination of this Agreement, as set forth in Sections 1.4(b) and 3.2, above, shall not exceed an amount equal to the monthly base salary of Employee multiplied by the number of months left on the unexpired term of this Agreement.

3.7 Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, which became effective on January 1, 2012, if Employee is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the Town such amounts paid; (2) if the Town pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse the Town such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the Town shall be fully reimbursed to the Town or void if not yet paid to Employee. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

Section 4. Salary and Automobile Allowance.

4.1 Town agrees to pay Employee for his services rendered a base salary of Eighteen Thousand Dollars (\$18,000.00) per month, less required and authorized deductions, in installments at the same time as other employees of the Town are paid. The Town Council, in its sole discretion, may grant merit increases to Employee's base salary.

4.2 Employee shall receive an automobile allowance of Six Hundred Fifty Dollars (\$650.00) per month for use of his automobile in connection with Town business. Employee shall be responsible for all expenses associated with the purchase, operation, maintenance and repair of his vehicle.

Section 5. Benefits.

5.1 Employee shall be eligible for the same employee benefits as regular full time employees of the Town as said benefits exist from time to time.

5.2 To the extent the Town's approved annual budget designates sufficient funds for the purposes identified in this section, the Town agrees to pay for the professional dues and subscriptions necessary for the Employee's continued and full participation in national, state, regional and local associations and organizations necessary and/or desirable for his continued professional participation, growth and advancement, and for the good of the Town.

5.3 To the extent the Town's approved annual budget designates sufficient funds for the following purposes, the Town agrees to pay registration fees and travel subsistence expenses of the Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary and/or appropriate official business and other functions for the Town. Upon the prior approval of the Town Council, the Town also agrees to pay for related tuition, fees, and travel and subsistence expenses of the Employee for educational degree programs, short courses, institutes, and seminars that are necessary for his professional development and the good of the Town.

Section 6. Performance Evaluation.

The Town shall review and evaluate the performance of the Employee at least annually. Said review and evaluation shall be conducted by the Town Council. Evaluation criteria shall be developed and adopted by the Town Council after consultation with Employee.

Section 7. Bonding.

The Town shall bear the full costs of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 8. General Provisions.

8.1 This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of Employee by Town, and contains

all of the covenants and agreements between the parties with respect to the employment of Employee by Town.

8.2 Each party agrees and acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

8.3 Any modification of this Agreement will be effective only if made in writing and signed by both Employee and Town.

8.4 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

8.5 This Agreement shall be governed by and construed in accordance with the law of the State of California.

8.6 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement.

8.7 Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

By: _____
Frank Robinson
Employee

By: _____
Barb Stanton
Mayor
Town of Apple Valley