



# TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** April 30, 2013

**From:** Lori Lamson      **Item No:** 3  
Community Development Director  
Community Development Department

**Subject:** AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR SOLUTION STRATEGIES FOR THE PREPARATION OF THE MULTI-SPECIES HABITAT CONSERVATION PLAN

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

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## RECOMMENDED ACTION:

Approve the amendment to the Professional Services Agreement for Solution Strategies allocating additional funds in the amount of \$163,000, which would cover unpaid deferred costs since June 2011 for the preparation of the Multi-Species Habitat Conservation Plan (MSHCP). The additional amount to the Solution Strategies contract will pay for soft costs rendered by them in continuing on with the progression to complete the plan.

## SUMMARY:

In June 2011, Solution Strategies began deferring soft costs of the plan preparation to ensure that the funds to complete the plan would not be depleted prior to completion of the review and approval by the CA Department of Fish and Game and the US Fish and Wildlife Service. Since this date the Town was awarded a Section 6 Grant for the continued planning and development of the Town's Multi-Species Habitat Conservation Plan (MSHCP) in the amount of \$813,750. These costs will cover current and future expenditures for the completion and review of the plan. The costs incurred from June 2011 to current date are \$163,000 and the grant monies can not cover this amount. The total cost for this deferred amount will be paid for over the next three years. This is the second amendment to this contract. The first amendment was in January 2013 to accommodate the grant funding that was awarded under the Section 6 grant.

As part of the plan, revenue sources will be implemented through mitigation costs for future development to be covered under the plan. The Town will recoup all costs to develop this plan through future development mitigation costs.

## **BACKGROUND:**

In 2007, the Town entered into a Professional Services agreement with Solution Strategies to prepare a Multi-Species Habitat Conservation Plan. After being party to, and witnessing the struggles of complying with the Endangered Species Act, including navigating through the state and federal agency review process, the Town decided to pursue the MSHCP process. This ease compliance with Endangered Species Act for future development and implement a one-stop process through the Town. The MSHCP would also ensure local control of preserving and conserving its desert habitat.

Initially, the Town was instructed by both agencies to follow the conservation strategies provided for in the private lands sections of the federal West Mojave Plan (WEMO). This followed by CDFG and USFWS requesting the Town to become involved in the new planning effort (WEMO) led by the County of San Bernardino to develop a MSHCP for private lands in the West Mojave Desert. In May 2008, the Town determined that the WEMO did not provide coverage of sufficient species or a credible conservation plan to support the Town's needs; therefore, the Town would do a MSHCP independent of the WEMO. Both the state and federal agencies requested that the Town still continue to participate in the meetings. In September of 2009, the WEMO plan process ended, due to the the jurisdictions participating, led by San Bernardino County, not agreeing on terms with the state and federal agencies. Funding to continue these efforts were also exhausted and not replenished.

Also, in fall of 2009, Solar projects in the desert were given priority over any other projects being reviewed by CDFG and USFWS. Both agencies then requested that the Town track the Desert Renewable Energy Conservation Plan (DRECP) process as a potential stakeholder.

In Spring 2010, the Town conducted a CEQA Scoping Meeting and prepared the Notice of Intent for CEQA compliance. Soon after this meeting CDFG informed the Town that they no longer had the resources to work on the Town's MSHCP. Regardless, staff and the consultant continued to complete studies and mapping required for the plan. Changes in the strategies for climate change resulted in finding a solution for the long-term viability of the desert tortoise. Critical linkages were discovered and the strategy of the MSHCP began to change and evolve bringing in new biological data and methodology that had not been considered previously.

In July 2010, the Town submitted a Section 6 Grant to CDFG for processing and was told that the local office would not support and therefore would not process the request. In January 2011, the Town met with San Bernardino County and received a letter of support for the project from the County Board of Supervisors. The Town continued to work with USFWS during this time of unresponsiveness by CDFG. In April of 2011, a Notice of Intent was issued by USFWS and the Scoping Meeting took place in order to comply with NEPA.

In June 2011, CDFG advised the Town that it should join the DRECP planning effort. However, the Town has been reluctant to join this plan, due to the fact that it only covers solar projects and does not meet the Town's conservation strategies. It was agreed upon in August 2011, at a joint meeting with the DRECP, that the Town would track the DRECP process and share information so that they can work together as complimentary, but separate plans, once approved. It was about this time that soft costs for the project were being deferred upon the suggestion of Solution Strategies. The project started to gain some momentum with the interest of the DRECP team and Solution Strategies did not want to stop the progress due to limited funds. They volunteered to continue working on the project while monitoring the costs that were not being billed.

In December 2011, the Town resubmitted the Section 6 Grant. The local office processed the grant application and forwarded it to the Sacramento offices. In January 2012, Town staff and the consultant met with CDFG staff overseeing the Section 6 Grant review. After receiving comments and support from the Sacramento offices of CDFG, the grant application was revised and resubmitted. A majority of the effort put into obtaining this grant was allocated as deferred soft costs by Solution Strategies. In August 2012, the Town was notified that it was awarded the grant for the amount requested.

Now that we have obtained the grant, we have the attention of both agencies, specifically the regional staff. The grant includes monies to pay for a CDFG staff member to review the plan and both agencies are starting to take this project seriously. The momentum is now in the Town's favor. The deferred costs will cover the soft costs that Solution Strategies has not billed since June 2011. The Section 6 grant received will pay for progress, review and completion of the plan from now until final approval. All costs expended by the Town will be folded back into the mitigation costs for the plan, where by the Town will receive 100% cost recovery.

Attached is a detailed progress report showing the work that has been accomplished since 2007.

**FISCAL IMPACT:**

The total amount will be funded over a three year period. The amount funded in the 2012-2013 fiscal year has been budgeted. All future expenditures for this contract will be brought forward in the 2013-2014 and 2014-2015 budgets for Council to review and approve. A cost recovery shall be built into the mitigations for the plan to recover all of the \$1,713,000.00 expended for the project.

- ATTACHMENTS:**
- 1) Chronological Progress Report
  - 2) Draft Amended Contract

**Attachment 1  
Town of Apple Valley  
Multi-Species Habitat Conservation Plan/Natural Community Conservation Plan  
Chronology**

The purpose of this chronology is to provide highlights of the work accomplished by the Town for the MSHCP.

Much of the work is ongoing in nature to ensure that scientific data is up to date and that the conservation strategy reflects the current thinking concerning climate change and endangered species protection. As well as, to ensure consistency with all of the conservation planning efforts and plans in San Bernardino County.

Over 120 draft maps and graphic exhibits have been prepared for this effort.

<b>2007</b>	
<b>July</b>	<p>Project set-up/planning meeting with Town and Consultant</p> <p>Meeting Town/Consultants regarding draft General Plan update biological analysis</p> <p>Attend West Mojave Working Group meeting</p> <p>Initiate review of Town's available data, previous studies, analysis, and supporting environmental documentation.</p> <p><b>Note:</b> Direction from resource agencies to the Town was for MSHCP to follow the conservation strategies provided for in the private lands sections of the federal West Mojave Plan.</p>
<b>August</b>	<p>Attend Desert Council meeting (WEMO)</p> <p>Coordination USFWS</p> <p>Coordination CDFG</p>
<b>September</b>	Public meetings regarding General Plan/MSHCP
<b>October</b>	
<b>November</b>	<p>Attend West Mojave Habitat Conservation Plan and Conservation Banking Plan meeting</p> <p><b>Note:</b> CDFG and USFWS asked the Town to become involved in a new planning effort (WEMO) led by the County of San Bernardino to develop a MSHCP/NCCP for private lands in the West Mojave Desert.</p>
<b>December</b>	Develop MSHCP work plan and schedule
<b>2008</b>	
<b>January</b>	Review of draft General Plan policies related to MSHCP

	Initiate Species Review
<b>February</b>	Review draft work plan Finalize MSHCP area Finalize MSHCP species list Attend WEMO meeting Review General Plan Open Space Element
<b>March</b>	Meeting with Town and County of San Bernardino planning staff Prepare mapping-consultant Scope of Work Draft Biological Element of General Plan
<b>April</b>	Prepare bio-consultant Scope of Work Draft MSHCP document outline Initial draft Chapter 1 Attend WEMO meeting
<b>May</b>	Respond to CDFG/USFWS regarding WEMO/MSHCP <b>Note:</b> Town determined that the WEMO did not provide coverage of sufficient species or a credible conservation plan to support the Town's needs; therefore, the Town would do MSHCP independent of WEMO. However, agencies requested Town continue to participate in meetings. Joint Planning Commission/General Plan Committee meeting Attend Desert Managers Group meeting
<b>June</b>	Coordination with BLM regarding North Pointe lease Review WEMO matrix/reports Initial draft Chapter 2 Review soils information
<b>July</b>	Meeting with USFWS regarding MSHCP Meeting with BLM regarding MSHCP Attend WEMO meeting
<b>August</b>	Draft HCP checklist Attend WEMO meeting Review original WEMO/Alternative A
<b>September</b>	Review/comment on draft WEMO plan Prepare MSHCP handouts for community booth Attend WEMO meeting

	<p>Initiate MSHCP analysis</p> <p>Endangered species research</p> <p>Summarize Alternative A</p>
<b>October</b>	<p>MSHCP booth for Town's 20<sup>th</sup> Anniversary - Fall Festival</p> <p>MSHCP Community meeting</p> <p>Meeting with CDFG regarding MSHCP</p> <p>Draft habitat maps and species accounts</p>
<b>November</b>	<p>Update project work plan</p> <p>Research climate change</p>
<b>December</b>	<p>Attend Desert Managers Group meeting</p> <p>Regulatory compliance analysis</p> <p>Mapping/species analysis</p>
<b>2009</b>	
<b>January</b>	<p>Species accounts</p>
<b>February</b>	<p>Administrative Draft General Plan and Environmental Impact Report</p>
<b>March</b>	<p>MSHCP spring site tour (project team) routes, habitat, development areas, corridors and linkages, federal/state lands, photos</p> <p>Prepare stakeholder issues list</p> <p>Preliminary development of conservation strategy</p> <p><b>Note:</b> At this time, the Town was following a traditional approach to develop the plan within the boundaries of the Town and its SOI.</p>
<b>April</b>	<p>Update information based on site-tour</p> <p>Draft MSHCP video script</p> <p>MSHCP video photo shoot</p> <p>Preliminary draft conservation strategy</p> <p>Initial draft of project description</p>
<b>May</b>	<p>ID conservation strategy alternatives</p> <p>Review BLM regulations</p> <p>ID potential conservation management opportunities on BLM lands</p> <p>Call with BLM</p>
<b>June</b>	<p>Finalize draft video script</p> <p>Initial preparation impact analysis</p> <p>Draft interim guidelines/mitigation measures for Town to use while MSHCP</p>

	<p>under development</p> <p>Draft habitat matrix</p>
<b>July</b>	<p>Draft range and impact maps</p> <p>Draft species table</p> <p>Draft impact analysis table</p> <p>Draft effect on critical habitat</p> <p>Draft definition of take</p> <p>Draft conservation goals</p> <p>Outline conservation/ mitigation strategies</p> <p>Research global warming</p>
<b>August</b>	<p>Prepare vegetation impacts analysis</p> <p>Meet with CDFG</p> <p>Meet with USFWS</p> <p>Revise habitat matrix</p>
<b>September</b>	<p>Research impact of desert energy projects on MSHCP processing and schedule</p> <p><b>Note:</b> WEMO ended without being able to agree to terms. Town anticipated MSHCP process would become a priority however Solar projects were given state/federal priority. Resource agencies then requested Town track the DRECP process as a potential stakeholder.</p>
<b>October</b>	<p>Preparation of MSHCP briefing papers/ talking points</p> <p>Edit species accounts</p>
<b>November</b>	<p>Draft maps</p> <p>Attend DMG meeting</p>
<b>December</b>	<p>Voice recording for video</p> <p>Prepare MSHCP PowerPoint presentation</p>
<b>2010</b>	
<b>January</b>	<p>Review SB 2921 regarding MSHCP</p> <p>Prepare draft cost analysis of environmental permitting without MSHCP</p> <p>Update species, habitat, range, and land use maps</p> <p>MSHCP briefing report to Town Council</p>
<b>February</b>	<p>Attend Desert Tortoise Symposium</p> <p>Attend Desert Managers Group meeting</p>
<b>March</b>	<p>Draft mitigation/conservation current regulations and policies briefing paper</p>

	<p>Review land use calculations</p> <p>Attend DRECP stakeholders meeting</p> <p>Review San Bernardino County documents; conservation goals and policies</p> <p>Research raven management plans</p> <p>Research Rand Mountain OHV</p> <p>Research Section 6 grant</p>
<b>April</b>	<p>CEQA scoping session public notice</p> <p>Prepare hand-outs/information for CEQA Scoping Session</p> <p>Review Mojave Ground Squirrel proposed federal listing</p> <p>Prepare Notice of Intent for USFWS NEPA Scoping Session</p> <p>Attend Mojave Desert Climate Change Workshop</p> <p>RETI/federal register research</p> <p>CEQA Scoping Session</p>
<b>May</b>	<p>Meeting with Town and County of San Bernardino Planning</p> <p>Research Desert Protection Act, Desert Tortoise Recovery Plan, Tortoise Habitat Model, MGS, Alluvial Fan Task Force Report, Big Horn Sheep Recovery Plan, RETI, Hacienda Project EIR, Bridal Path Estates, Strata Project EIR, definition of take, Secretarial Order 3289, and climate change</p> <p>Preliminary draft of initial study</p> <p>Attend DMG meeting</p> <p>Attend Renewable Energy Scientific Advisory Group meeting</p> <p>Review GIS maps</p> <p>Prepare graphic exhibits</p>
<b>June</b>	<p>Research corridors and linkages including 115 and utility ROW</p> <p>Research DesertXpress</p> <p>Meet with Lahontan RWQCB</p> <p>Attend DRECP meeting</p> <p>Draft Section 6 grant application</p> <p>Meet with USFWS</p> <p><b>Note:</b> CDFG informed the Town that they no longer had the resources to work on the MSHCP</p>
<b>July</b>	<p>Revise Conservation Strategy to regional focus</p> <p><b>Note:</b> Due to climate change, the resource agencies identified the need to link already designated conservation lands in the West Mojave Desert as a major need</p>



	<p>to protect the long-term viability of the desert tortoise. Studies showed the Town and its SOI contained critical north-south and east-west linkages that could help address this identified need.</p> <p>Prepare 5-Point Plan handout</p> <p>Prepare hand drawn discussion map</p> <p>Research America’s Great Outdoors Initiative, OHV conservation education programs</p> <p>Draft Wild Wash linkage description</p> <p>Prepare briefing papers</p> <p>Present MSHCP concept to resource agencies, Senator Feinstein, and Congressman Lewis offices</p> <p><b>Note:</b> CDFG informed Town they would not process Section 6 grant</p>
<b>August</b>	<p>Meet with USFWS</p> <p>Identify key elements of MSHCP</p> <p>Develop management and monitoring program overview</p> <p>Draft overview of predator management program</p> <p>Draft overview of Mojave River management program</p> <p>Conceptual drawing of Mojave River management plan</p> <p>Conceptual model of relationships in Wild Wash</p> <p>Conceptual model of reserve assembly</p> <p>Develop institutional framework education program</p> <p>Draft phasing schedule</p> <p>Draft acreage tables</p>
<b>September</b>	<p>Research/identify key building blocks for conservation strategy and linkages</p> <p>Review SC Wildlands Connectivity Report</p> <p>MSHCP booth for Town Fall Festival</p> <p>Mojave Watershed Group</p> <p>Attend Caltrans Scoping Session</p> <p>Develop WMP comparison table</p>
<b>October</b>	<p>Draft Big Horn Sheep species account</p> <p>Prepare Environmental Impact Report</p> <p>Analysis table using Town and San Bernardino County General Plans</p> <p>Research free range dog policy</p>
<b>November</b>	<p>Draft descriptions for North/South and East/West linkages</p>

	<p>Research Lucerne Valley Community Plan</p> <p>Research habitat needs for Burrowing Owl</p>
<b>December</b>	<p>MSHCP status update to Town Council</p> <p>Attend DMG meeting</p>
<b>2011</b>	
<b>January</b>	<p>Joint meeting with Town and San Bernardino County</p> <p>Attend DRECP two day meeting/workshops</p> <p>Research County waste-management policies</p> <p>Town renewable energy ordinance</p> <p>Meet with USFWS</p> <p>Prepare MSHCP list of glossary and acronyms</p>
<b>February</b>	<p>Comment letter to California Energy Commission</p> <p>Attend DRECP meeting</p> <p>Attend Desert Tortoise Symposium conference</p>
<b>March</b>	<p>MSHCP briefing paper</p> <p>Meetings with Resource Agency, Senator Feinstein, and Congressman Lewis offices</p> <p>Attend DMG meeting</p> <p>Attend Tortoise Recovery meeting</p> <p>DRECP web-stream</p> <p>Review Solar PEIS</p> <p>Mail USFWS Notice of Intent NEPA Scoping Session Announcement</p>
<b>April</b>	<p>USFWS NEPA Scoping Session</p> <p>Attend High Desert Corridor meeting</p>
<b>May</b>	<p>Comment letter draft for Solar PEIS</p> <p>MSHCP presentation to Mojave Desert Resource Conservation District</p>
<b>June</b>	<p>Meet with CDFG</p> <p><b>Note:</b> CDFG and USFWS advised Town should join DRECP planning effort. However, DRECP is only for solar projects and does not meet Town's conservation strategies.</p> <p>NEPA Scoping Report</p> <p>Meet OHV stakeholder group</p> <p>Review regional hydrology</p>

<b>July</b>	<p>Comparison of document structure - Contra Costa/Coachella HCPs</p> <p>Coordination with OHV groups regarding mapping</p> <p>Research SCE transmission line expansion</p> <p>Draft outline of key natural resource areas</p> <p>Call with DRECP</p>
<b>August</b>	<p>Meet with SCE</p> <p>Joint meeting with Town, County, and DRECP</p> <p>Draft criteria table</p> <p>Prepare MSHCP discussion map</p> <p>MSHCP presentation to Town Rotary Club</p> <p>Identify potential plan acquisition areas</p> <p>Update project schedule</p>
<b>September</b>	<p>Submit comment letter to DRECP</p> <p>MSHCP booth for Town Fall Festival</p> <p>Preliminary draft MSHCP key decisions</p> <p>Administrative draft chapters 1 - 5</p>
<b>October</b>	<p>MSHCP presentation to Town Chamber of Commerce</p> <p>Draft Section 6 grant application</p> <p>Town and County Planning meeting</p> <p>DRECP coordination for TAV/DRECP working group</p> <p>Attend DRECP field tour regarding renewable energy sites</p>
<b>November</b>	<p>Administrative draft chapters</p> <p>Meet with USFWS</p>
<b>December</b>	<p>Submit Section 6 grant application</p> <p>Attend DRECP meeting</p> <p>Update species information</p> <p>Conference call with CDFG regarding grant application</p>
<b>2012</b>	
<b>January</b>	<p>Revise/resubmit Section 6 grant application</p>
<b>February</b>	<p>Submit Sustainable Communities Grant FFAST application</p> <p>Review OHV route maps</p>
<b>March</b>	<p>Status update meeting with Town Mayor and Manager</p>

<b>April</b>	Research SAMPS/VVWRA fine Presentation of MSHCP to County Planning Directors
<b>May</b>	Meet with VVWRA Submit proposal to VVWRA
<b>June</b>	Meet with Chris Carrillo (aide to Senator Feinstein) and BLM WebEx with DRECP/TAV working group Create maps with DRECP data layers Review comment letters to DRECP
<b>July</b>	Meet with CDFG Create comparison table of species covered by MSHCP and DRECP
<b>August</b>	Town awarded Section 6 grant Update schedule with Section 6 grant
<b>September</b>	DRECP WebEx Review DRECP Science Advisory report
<b>October</b>	Joint Agency meeting (TAV, CDFG, USFWS) Coordination with CDFG regarding Grant Agreement
<b>November</b>	Prepare information to complete Grant Agreement
<b>December</b>	Prepare staff report for Grant Agreement to be submitted to Town Council

**Attachment 2**  
**Amended Professional Services Agreement**

**TOWN OF APPLE VALLEY  
PROFESSIONAL SERVICES AGREEMENT – AMENDMENT #1**

**SOLUTION STRATEGIES – MULTI-SPECIES HABITAT CONSERVATION PLAN**

This Agreement is made and entered into this 10<sup>th</sup> day of April, 2007 and amended this 30<sup>th</sup> day of April, 2013 by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California, with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California 92307 (“Town”) and Solution Strategies a Corporation with its principal place of business at 5777 W. Century Boulevard, Suite 900, Los Angeles, CA 90045 (“Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in preparing Multi-Species Habitat Conservation Plans to public clients, is licensed in the State of California, and is familiar with the plans of Town

**2.2 Project.**

Town desires to engage Consultant to render such services for the Town of Apple Valley Multi-Species Habitat Conservation Plan project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional environmental planning consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from April 10, 2007 until the completion of the project. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Town, or who are determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Town. The key personnel for performance of this Agreement are as follows: Linda Mitrovich, President.

3.2.5 Town's Representative. The Town hereby designates Director of Community Development or his or her designee, to act as its representative for the performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Town's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Linda Mitrovich, President, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with Town staff in the performance of Services and shall be available to Town's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Town Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant



performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Town, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000.00 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000.00 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Town to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Town, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Town, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Town, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its directors, officials, officers, employees, agents, and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Town. Consultant shall guarantee that, at the option of the Town, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Town.

3.2.10.8 Verification of Coverage. Consultant shall furnish Town with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Town if requested. All certificates and endorsements must be received and approved by the Town before work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the Town, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the

Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed one million, seven hundred and thirteen thousand dollars (\$1,713,000), which includes the original amount of \$1,000,000 and the first amendment amount of \$555,000, and the second amended amount of \$163,000 without written approval of Town's Director of Community Development. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to Town a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Town shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town.

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the

execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Town's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Town shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Town, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. Town may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Town may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Town may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.5 Ownership of Materials and Confidentiality.**

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited

to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that Town is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the Town.

3.5.3 Right to Use. Town shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at Town's sole risk. If Town uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Town upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless,

pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Town of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of Town, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or anything pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

### **3.6 General Provisions.**

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Consultant:**

Linda Mitrovich, President  
5777 W. Century Boulevard, Suite 900  
Los Angeles, CA 90045

**Town:**

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, California 92307  
Lori Lamson, Community Development Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

### 3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or

equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Town or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Consultant shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Town, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 Town's Right to Employ Other Consultants. Town reserves right to employ other consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.



3.6.8 Construction; References; Captions. 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 or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

3.6.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.10 Waiver. 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.

3.6.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

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

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the Town's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Attorney's Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE  
TO  
TOWN OF APPLE VALLEY  
PROFESSIONAL SERVICES AGREEMENT**

**TOWN OF APPLE VALLEY**

**SOLUTION STRATEGIES**

By: \_\_\_\_\_  
Honorable Curt Emick,  
Mayor

By: \_\_\_\_\_  
Linda Mitrovich,  
President

*ATTEST:*

\_\_\_\_\_  
Ms. La Vonda M. Pearson, Town Clerk

*APPROVED AS TO CONTENT:*

\_\_\_\_\_  
Frank W. Robinson, Town Manager

*APPROVED AS TO FORM:*

BEST BEST & KRIEGER LLP

\_\_\_\_\_  
John Brown, Town Attorney

## EXHIBIT "A"

### SCOPE OF SERVICES AMENDED CONTRACT

The funding awarded through the Section 6 Grant will allow the Town to complete the Plan that was started in 2007. These monies will enable the Town to complete the following tasks, all of which can be completed within the three year grant period.

**Task 1. Enter into NCCP Planning Agreement with CDFG and USFWS for NCCP:** Meetings will be held with CDFG, USFWS, Town, and consultant to prepare, approve and sign Planning Agreement.

*Deliverables: Approved Planning Agreement*

**Task 2. Independent Science Advisor Process:** Independent Science Advisors will be led by an independent third-party facilitator. Town and consultant will provide baseline and other scientific information. Town and consultant will also provide a Plan orientation to the Advisors. The Advisors will then produce a report.

*Deliverables: Report and recommendation by Science Advisory Committee*

**Task 3. Project Management and Meetings:** Meetings will be held with the consultant, the USFWS, the CDFG, the BLM, Town staff, County staff, and others as appropriate including USFS, ACOE, RWQCB, etc. The MSHCP/NCCP process will be managed on an ongoing basis.

*Deliverables: approximately 24 meetings; meeting minutes, action item result summaries*

**Task 4. Final Public Involvement Process:** Public outreach will continue throughout finalization of the Plan to ensure the public has ample opportunity to provide input. Community meetings, stakeholder meetings, individual meetings, and Town and County Public Hearings will occur through final approval and the issuance of permits. This phase of public outreach will include the incorporation of public comments drafts of the Plan and NEPA/CEQA documents. The public will also be involved and notified as permits for the Plan are processed. The Town website will be regularly updated to notify the public of Plan developments and to post the draft documents.

*Deliverables: approximately 8 large community meetings, 4 Town Council meetings, 4 Board of Supervisors meetings, 1 updated FAQ, website content, issue papers, and smaller meetings as needed*

**Task 5. Prepare Final MSHCP/NCCP.** Based on comments received from the USFWS, CDFG, BLM, the Stakeholder Groups, and the public drafts of the Plan, and following the NEPA/CEQA public review period, the Town will prepare a Final MSHCP/NCCP. The Plan will be revised as necessary to reflect any changes required by the input received. The Town will review public comments on the drafts and prepare responses to these comments. The processing, final revisions to, and approval of the Final Plan will proceed with the CEQA/NEPA process.

*Deliverables: Final Draft MSHCP/NCCP*

**Task 6. Prepare Final NEPA/CEQA Documents.** The Town will prepare combined environmental documents to comply with NEPA/CEQA. Work on both the Administrative and Public Drafts will be conducted in this task. The Town will determine the form of the environmental documents based on comments provided by the USFWS and CDFG staff. The Town will also prepare the Notice of Completion (NOC) to accompany the Final NEPA/CEQA documents. Upon release of the USFWS biological opinion, the environmental documents will be finalized and distributed to the public.

*Deliverables: Approve NEPA/CEQA and NOC*

**Task 7. Prepare Final Implementing Agreement and Obtain Permits.** The Town will assist the regulatory agencies with permit processing tasks, as needed. The Town will prepare the MSHCP permit application to the USFWS that will accompany the Draft Plan (there is no formal permit application form to CDFG). Once the Draft Plan is submitted with the permit application, the CDFG and USFWS need to prepare their own internal documents, which may require new information. The Town will provide additional information to USFWS and CDFG to support their decision documents, as needed to finalize the Implementing Agreement.

*Deliverables: Final Implementing Agreement, HCP permit application, additional information as needed to USFWS and DFG to support decision documents*

**EXHIBIT "B"**

**SCHEDULE OF SERVICES**

<b>ENTER INTO NCCP AGREEMENT WITH CDFG AND USFWS</b>	<b>11/12 – 4/13</b>
<b>INDEPENDENT SCIENCE ADVISOR PROCESS</b>	<b>3/13 – 9/13</b>
<b>ONGOING PROJECT MANAGEMENT MEETINGS</b>	<b>11/12 -11/15</b>
<b>PUBLIC MEETINGS</b>	<b>6/13-11/15</b>
<b>PREPARE FINAL MSHCP</b>	<b>3/13-1/15</b>
<b>PREPARE FINAL NEPA/CEQA DOCUMENTS</b>	<b>6/13 – 8/14</b>
<b>PREPARE FULL IMPLEMENTING AGREEMENT AND OBTAIN PERMIT</b>	<b>7/14 – 11/15</b>
<b>CDFG AND USFWS REVIEW OF PLAN</b>	<b>3/13 – 11/15</b>

**EXHIBIT "C"**

**COMPENSATION**

**ORIGINAL CONTRACT AMOUNT (4/10/07)**

**\$1,000,000.00**

**AMENDED CONTRACT AMOUNT (1/8/13)**

**AN ADDITIONAL \$555,000.00 FOR A TOTAL AMOUNT OF \$1,555,000.00**

**AMENDED CONTRACT AMOUNT (4/23/13)**

**AN ADDITIONAL \$163,000 FOR A TOTAL AMOUNT OF \$1,713,000.00**