



# TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** July 22, 2014  
**From:** John Brown, Town Attorney      **Item No:** 3  
Best, Best & Krieger  
**Subject:** APPROVAL OF THE FIRST AMENDMENT TO THE EMPLOYMENT  
AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND FRANK  
ROBINSON

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

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## RECOMMENDED ACTION:

Approval of the first amendment to 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.

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN  
THE TOWN OF APPLE VALLEY AND ITS TOWN MANAGER**

This FIRST AMENDMENT (hereinafter referred to as "First Amendment") is made and entered into by and between FRANK ROBINSON (hereinafter referred to as "Employee") and the TOWN OF APPLE VALLEY, CALIFORNIA (hereinafter referred to as "Town") as of and to be effective this 22nd day of July, 2014, in order to amend, in writing, the terms and conditions of employment of the Town Manager.

WHEREAS, in or about February 2012, the Town and Employee entered into an Employment Agreement (hereinafter referred to as the "Master Agreement"); and

WHEREAS, the Town and Employee now seek to enter into a First Amendment to the Master Agreement and to provide new terms and conditions of employment of the Town Manager; and

WHEREAS, the Town and Employee now desire to amend the Master Agreement in order to provide for Employee's severance compensation in the event that Employee resigns in response to a diminishment of Employee's authority as Town Manager; and

WHEREAS, the Town and Employee now desire to amend the Master Agreement in order to provide for a one-time payment by Town of two percent (2%) of Employee's base salary to Employee's retirement plan account; and

WHEREAS, the Town and Employee now desire to amend the Master Agreement in order to provide for an increased vacation leave accrual rate for Employee both retroactively and going forward into the future.

NOW, THEREFORE, the Town and Employee hereto agree as follows:

1. Except as modified by this First Amendment, all provisions of the Master Agreement, shall remain in full force and effect for the term thereof.

2. Paragraph 3.2 of the Master Agreement shall be amended in its entirety to read as follows:

3.2 In the event that Employee and this Agreement are terminated without cause, Town agrees to provide Employee with severance pay in a one-time 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. The Town further agrees that any material diminishment of the authority of the Town Manager, as provided in Sections 2.08.060 and 2.08.070 of the Town of Apple Valley Municipal Code, by the Town Council may, at Employee's discretion, be deemed to be a termination without cause pursuant to this section of this Agreement. Such termination shall entitle Employee to severance pay and health insurance continuation premium payments if Employee resigns within thirty (30) days of the Town Council's material diminishment of the authority of the Town Manager.

3. Paragraph 3.5 of the Master Agreement shall be amended in its entirety to read as follows:

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 Employee resigns from his position with the Town, then Employee shall provide the Town sixty (60) days' notice in advance, unless the Parties agree otherwise. In the event 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 Employee for accrued vacation benefits. However, if Employee resigns within thirty (30) days of the Town Council's material diminishment of the authority of the Town Manager, then Employee shall be entitled to severance pay in a one-time lump sum cash payment equal to twelve (12) months' base salary, less deductions required by law, and health insurance continuation premium payments for the same duration as his severance payment or until Employee finds other employment, whichever occurs first.

4. A new paragraph 5.2 of the Master Agreement shall be added and shall read in its entirety as follows:

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 to the 401(a) retirement plan account held in the name of Employee a one-time additional payment in the amount of two percent (2%) of Employee's base

salary. This one-time additional payment shall in no way interfere with, detract from, or otherwise reduce any other regular or recurring payments to the 401(a) retirement plan account held in the name of Employee made by the Town or by Employee. This one-time additional payment shall be made only once and shall not be made until the Master Agreement, as amended by the First Amendment, is approved by both the Town and Employee.

5. A new paragraph 5.3 of the Master Agreement shall be added and shall read in its entirety as follows:

5.3 The Town agrees to increase the vacation leave accrual rate for Employee to a new rate of four (4) weeks of vacation leave per full year of employment with the Town. The Town further agrees to increase the vacation leave accrual rate for Employee to four (4) weeks of vacation leave per full year of employment retroactively. The new rate of four (4) weeks of vacation leave per full year of employment shall be applied back to the date of the most recent annual performance evaluation of Employee, which was held on the 14th day of February, 2014. The new rate of four (4) weeks of vacation leave per full year of employment shall continue going forward into the future, but shall be subject to future revisions or adjustments agreed to by the Town and Employee. This increase to the vacation leave accrual rate for Employee, retroactively or going forward, shall not be take effect until the Master Agreement, as amended by the First Amendment, is approved by both the Town and Employee.

6. Existing paragraph 5.2 of the Master Agreement shall be re-numbered as new paragraph 5.4 of the Master Agreement, as amended by the First Amendment, but shall otherwise remain unchanged by this First Amendment.

7. Existing paragraph 5.3 of the Master Agreement shall be re-numbered as new paragraph 5.5 of the Master Agreement, as amended by the First Amendment, but shall otherwise remain unchanged by this First Amendment.

IN WITNESS WHEREOF, the Town and Employee have executed this First Amendment to the Master Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

TOWN OF APPLE VALLEY

By: \_\_\_\_\_

TOWN MANAGER

\_\_\_\_\_  
Frank Robinson