



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** June 28, 2016  
**From:** Town Attorney's Office                                      **Item No:** 9  
**Subject:** CONSIDERATION OF AT-LARGE VERSUS BY-DISTRICT ELECTION SYSTEM

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

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### RECOMMENDED ACTION:

Staff recommends that the Town Council:

- A. Direct staff to initiate a process to consider the pros and cons of changing the Town's current at-large election system possibly to a by-district election system;
- B. Authorize the Town Manager to execute an agreement with National Demographics Corporation to provide demographic assistance to the Town Council in considering this matter; and
- C. Authorize the Town Manager to execute an agreement with Remcho, Johansen & Purcell, LLP, to provide legal advice regarding the Town's legal alternatives.

### SUMMARY:

In recent years, concerns have been expressed by some about the ability of at-large election systems to elect diverse and representative legislative bodies. A number of cities and other special districts across California, including some in San Bernardino County, are transitioning from at-large to by-district election systems. The California Legislature recognized this problem when it enacted the California Voting Rights Act (Elections Code §§ 14025, et seq.; hereinafter the "CVRA").

Town Staff is recommending the Town Council initiate a process which will enable it to review all of the Town's legal alternatives including the possibility of transitioning to a by-district election system. Under the CVRA, the Town has the authority to enact by-district elections following several public hearings and the adoption of an ordinance.

It is expected that the Town will engage in substantial public consultation and will need to retain the services of a demographic expert, to assist with community engagement and the possible legal alternatives currently available to the Town. Staff is also recommending that the Town retain a specialist legal adviser, to ensure the Town remains in compliance with the CVRA and the Federal Voting Rights Act.

### **BACKGROUND:**

In recent years, a number of cities in California have been sued under the CVRA. Typically, plaintiffs allege that the defendant city's at-large election system has resulted in "racially polarized" voting, which is defined in the CVRA as "voting in which there is a difference . . . in the choice of candidates of other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." (Elec. Code, § 14026 (e).) The lawsuits usually request that the defendant city transition to a by-district system. In a by-district election system, a council candidate must reside within an election district that is a divisible part of the jurisdiction and is elected only by voters residing within that election district.

Since the CVRA was signed into law, many local government entities have converted (or are in the process of converting) to by-district elections. This includes at least 32 school districts, 27 community college districts, 30 cities, 1 county, and 8 water or other special districts. The move toward by-district election systems is not surprising in light of the cost of litigating under the CVRA. For example, Palmdale settled a CVRA lawsuit in 2015 for \$4.5 million, Modesto paid \$3 million to settle a similar case in 2008, and Anaheim settled in 2014 for an amount reported to be possibly as high as \$2 million. These numbers do not include the cities' costs in paying their own attorneys to defend the lawsuits.

Although Town Staff is of the opinion that racially polarized voting has not occurred in the Town, it appears both advisable and proactive to consider alternatives to the current at-large election system. The Town has long been committed to building an inclusive community, including inclusive representatives. The Town Council may wish to consider a transition to a by-district election system as a way to further serve those goals. Town Staff believes it would be wise to review the pros and cons of by-district elections at this time.

### **PROPOSED ACTION:**

#### Changing the Council Election Process from At-Large Elections to By-District Elections

The members of the Town Council are currently elected through an at-large election system, which means that the electors from the entire Town vote for the council members.

Under Government Code Section 34886, the Town Council may adopt an ordinance that requires the Town Council to be elected by district. If the Town were to select a by-district election system, that transition cannot result in reducing the term of any incumbent city council member. (Gov. Code, § 34873.) Therefore, the transition process will include not only the drawing and establishment of district boundaries, but also the sequencing of the elections so that an incumbent's term is not adversely affected.

#### Retention of Experts

If the Town Council chooses to initiate the process of considering possible changes in the current at-large election system, Town Staff recommends the Town Council also authorize the Town Manager to execute agreements with National Demographics Corporation to assist with the process and Remcho, Johansen & Purcell, LLP to provide legal advice regarding the Town's legal alternatives.

Town Staff, in conjunction with these consultants, will work to ensure residents of the Town have meaningful opportunity to participate in the district mapping process.

#### **FISCAL IMPACT:**

The agreement for demographic assistance has a not-to-exceed amount of \$18,000. The agreement for legal advice will be based on hourly rates. Therefore, the fiscal impact will depend upon the necessity of advice during the transition process. Funds for these expenditures are available within the Town Attorney's budget.

#### **ATTACHMENTS:**

1. Proposed Agreement with National Demographics Corporation
2. Proposed Agreement with Remcho, Johansen & Purcell, LLP (Provided under separate cover.)

**TOWN OF APPLE VALLEY  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 28th day of June, 2016 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 National Demographics, Inc., a California corporation with its principal place of business at P.O. Box 5271, Glendale, CA 91221 (“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 providing demographic and districting services 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’s consideration of a change to a by-district election system (“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 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 date of execution to June 30, 2017 unless earlier terminated as provided herein. 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. 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: Douglas M. Johnson.

3.2.5 Town's Representative. The Town hereby designates Frank Robinson, 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 Douglas M. Johnson, 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 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 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.

3.2.10.4 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. The total compensation shall not exceed eighteen thousand dollars (\$18,000.00) without written approval of Town's Representative. 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.

### **3.4 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 any publicity 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:**

National Demographics, Inc.  
P.O. Box 5271  
Glendale, CA 91221  
Douglas M. Johnson, President

**Town:**

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, California 92307  
Frank Robinson, Town Manager

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.

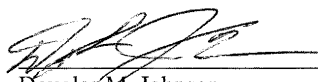
[SIGNATURES ON NEXT PAGE]

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

**TOWN OF APPLE VALLEY**

**NATIONAL DEMOGRAPHICS, INC.**

By: \_\_\_\_\_  
Frank Robinson  
Town Manager

By:   
\_\_\_\_\_  
Douglas M. Johnson  
President

*ATTEST:*

\_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

*APPROVED AS TO CONTENT:*

\_\_\_\_\_  
Frank Robinson, Town Manager

*APPROVED AS TO FORM:*

BEST BEST & KRIEGER LLP

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

**EXHIBIT "A"**

**SCOPE OF SERVICES**

ATTACHED BEHIND THIS PAGE





National Demographics Corporation

**A Proposal to the  
Town of Apple Valley  
for Demographic Services**

By National Demographics Corporation  
Douglas Johnson, President

June 23, 2016

Phone: (818) 254-1221  
FAX (818) 254-1221

P.O. Box 5271  
Glendale, CA 91221

[info@NDCresearch.com](mailto:info@NDCresearch.com)  
[www.NDCresearch.com](http://www.NDCresearch.com)



**National Demographics Corporation**

June 23, 2016

Mr. Thomas Rice  
Town of Apple Valley  
c/o Best, Best and Krieger

Dear Mr. Rice,

Thank you for the opportunity to provide this proposal to the Town of Apple Valley. NDC has 36 years of experience districting and redistricting local jurisdictions, together with unmatched experience working with jurisdictions facing California Voting Rights Act concerns, and extensive demographic, legal and academic history with the Inland Empire. We welcome the opportunity to bring the firm's expertise and skills to assist Apple Valley.

For each project, there are certain required basic elements, and there are a number of options that the Town can include or leave out at its option. NDC carefully tailors each project to the needs and goals of the individual client partner. NDC welcomes the opportunity to work with the Town to encourage public participation in this process, and NDC offers a number of tools developed specifically for public engagement in this effort.

The attached proposal consists of a brief introduction; specific proposed project elements and options; timeline and cost information; conclusion; and signature section. An appendix provides additional information on NDC, including company history; methodology; technical approach; and references.

NDC looks forward to working with you on this effort. Please call or email if you have any questions, concerns, or requests regarding this proposal.

Sincerely,

  
Douglas Johnson  
President



## National Demographics Corporation

### Executive Summary of Proposal

NDC will provide a variety of services related to the development and refinement of election districts, including public outreach, official consideration, adoption and implementation.

Optional elements include an NDC-designed and managed project website; paper- and excel-based “public participation kit”; online redistricting system that allows members of the public to draw and submit redistricting proposals online; and Spanish translation services.

**Timeline:** To be determined according to the client’s schedule

**Basic Elements:** \$18,000 (Not including per-meeting and optional project element costs)



## National Demographics Corporation

### **About National Demographics Corporation:**

#### **Brief Company History**

NDC has served hundreds of local governments over the past 36 years. Founded in 1979, NDC has performed work in all regions of the country, serving clients as varied as the States of Mississippi, Arizona, Florida and Illinois, Clark County Nevada, American Waterworks, California's Franchise Tax Board, the San Diego Unified School District, the Foundation for California, and the Arizona cities of Glendale, Mesa, Peoria, Phoenix, Mesa and Surprise. In the Central Valley, NDC has worked with clients in and around Hanford, Dinuba, Tulare, Kings County, Coalinga, Corcoran, Reedley, Lemoore, and Fresno, among others.

The company is especially well known for its work in local and state government. Since 2002, NDC has established a reputation as the state's leading demographic expert on the California Voting Rights Act (CVRA), having performed demographic assessments of potential CVRA liability for over 250 jurisdictions.

No company has been responsible for addressing the electoral demographic needs of more local governments, as NDC has districted and/or redistricted well over 150 local school districts, cities, water districts, county boards, and other local districts. Nationally recognized as a pioneer in good government districting and redistricting, NDC is especially experienced in working with local jurisdictions in California, Arizona and Nevada.

This background gives us unmatched expertise in the issues, questions, and decisions jurisdictions face in any discussion regarding the California and Federal Voting Rights Act and related election system choices.

#### **NDC's Districting Process**

The following information is provided for information and for use if a jurisdiction decides to move to by-district elections. If the client decides not to move to by-district elections, the work would end with the demographic analysis described above.

#### **Technical Expertise**

NDC's personnel are nationally recognized as leaders in the districting field, and are responsible for numerous books and articles on the subject. NDC possesses all the hardware and software necessary to the districting and redistricting needs of any jurisdiction, and its personnel have extensive experience in performing graphics districting and redistricting work as well as in developing databases for districting use.

The technical demands of a districting effort are high, and NDC is the undisputed leader in this area. But far more important than technical expertise are the interpersonal understanding and experience working with all parties in the process, including the public.

#### **Public Involvement**

NDC pioneered the "transparent districting" approach which involves the public at every stage of the process. The company invented the "public participation kit" for public



## National Demographics Corporation

participation in districting efforts, which many of the firm's competitors now attempt to duplicate. Perhaps NDC's most valuable service is the firm's experience transforming often-contentious and passionate debates on this difficult subject into thoughtful, constructive discussions focused on the options and outcomes rather than individual personalities or positions. NDC also has considerable experience working with translators in public forums and providing materials in English and Spanish.

### **Minority Group Outreach/Partnerships**

U.S. Supreme Court decisions are constantly changing the rules regarding districting, "race-based districting," and the establishment of districts focused on the electoral power of "protected classes." It is crucial that the consultant work with the racial, ethnic, and other community groups at the beginning of the process to welcome their ideas and develop the appropriate expectations regarding minority representation prospects. No NDC local districting or redistricting plans has ever been challenged in Court or by the Department of Justice.

### **Openness**

Any change in election systems can have momentous implications for the distribution of political power in a jurisdiction and for access by groups and individuals to the governance process. Not surprisingly, such changes often attract much public attention, sometimes generate intense controversy, and may draw charges of manipulation and abuse of power. Indeed, disputes over the form and substance of the process may often result in stalemate or legal challenge. It is crucial, therefore, that the jurisdiction establish, at the beginning, a process that is not only fair, but that is seen to be fair, to all contending groups and individuals.

### **Media Outreach**

The firm's work has been widely praised in the media, and NDC has worked extensively on background, off the record, and on the record with all types of press including radio, television, newspaper, and new media.

### **Local Leadership**

NDC views its role as an advisor and technical resource. The firm advises its clients, but every project remains the client's project. NDC offers guidance based on its experience and expertise, but ultimately the decisions are made by the jurisdiction itself. NDC welcomes the chance to assist this project under the guidance and direction of the jurisdiction's elected leadership, key staff members, and the entire community.

### **Impeccable References**

All of NDC's former clients – without exception – can be contacted for references. The firm has no embarrassing projects. All NDC's local districting and redistricting plans have been accepted into law with a minimum of controversy. A list of references is included with this proposal.



## National Demographics Corporation

Each of these elements of NDC's methodology is incorporated into the proposed project process below.

### Proposed Scope of Work

To provide the flexibility to meet the needs of the client if it decides to move to by-district elections, NDC offers a full menu of districting options:

#### Basic Districting Project Elements

Includes all of the services listed below: .....\$18,000

- Project Setup and coordination:
  - Development of redistricting database including Census and California Statewide Database data;
  - Incorporation of any Geographic Information System (GIS) data that the Town wishes to include and provides (often including school locations; school attendance areas; important local landmarks; or local neighborhood boundaries);
  - Initial discussion with key staff and/or Council members about demographics, communities of interest, schedule and criteria;
  - Any phone- or web-conference calls to discussion the project's progress or answer any Council, staff or media questions that may arise;
- Plan Development:
  - Creating of 2 to 4 initial draft maps for Council and public consideration;
  - Analysis and preparation for Council consideration of all whole or partial plans submitted by the public;
  - Conversion of all maps and reports to web-friendly versions for online posting;
  - Online posting of all maps to an interactive website for detailed Council and public review;
  - Any requested additional maps and/or map revisions requested;
- Plan Presentation:
  - Presentations at Council meetings and/or public forums by phone- or web-conference (or in person for the "in person presentation" fee listed under "optional elements" below);
- Work with the County Registrar of Voters to implement the final adopted plan.

#### Optional Districting Project Elements

Selected at the client's discretion:

- In-person presentation at additional Council meetings, facilitation of public forum(s), and/or any other requested meetings; .....\$2,000
- Preparation and processing of paper, PDF and Excel-based "public participation kits" (paper kits that allow the public to draw and submit their own plans).....\$4,000
- Creation, hosting, and updating of an NDC--managed project information website (if the client does not wish to manage a project website as part of its existing website). .....\$4,500



## National Demographics Corporation

- Hosting, managing and processing submitted plans for an online interactive system that allows public to draw and submit proposed districting plans through a standard web browser.....\$11,500
- Spanish translation of project-related materials.....\$125 per page

Stated prices include all travel, printing (except public participation kits and any large-plot maps), and other anticipated expenses.

Timeline: Timeline will be established in consultation with the client, but typically takes four to nine months.

### Other Potential Project-Related Expenses:

The only anticipated additional districting expenses would be any site or staff costs for conducting the community forums; and the cost of printing or copying paper copies of the “Public Participation Kit.” In NDC’s experience, most public participants will download and print the Kits in their own homes or offices.

### Sample Districting/Redistricting References

Mr. Steve Carrigan, City Manager, City of Los Banos, 520 J Street, Los Banos, CA 93635.  
Phone: 209-827-7000 Email: [steve.carrigan@losbanos.org](mailto:steve.carrigan@losbanos.org)

Mr. Roy Wasden, City Manager, City of Turlock, 156 S Broadway, Turlock, CA 95380.  
Phone: (209) 668-5540 ext 1101. Email: [RWasden@turlock.ca.us](mailto:RWasden@turlock.ca.us)

Mr. Devin Reif, Strategic Planning, City of Oakland, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612. Phone: 510-238-3550 Email: [DReiff@oaklandnet.com](mailto:DReiff@oaklandnet.com)

Mr. David Silberman, Deputy County Counsel, San Mateo County, 400 County Center, 6th Floor, Redwood City, CA 94063-1662. Phone: 650-363-4749 Email: [dsilberman@smcgov.org](mailto:dsilberman@smcgov.org)

Judge Hugh Rose (retired), Chairman, City of Modesto Districting Commission. 508 King Richard Lane, Modesto, CA 95350. Phone (209) 522-0719. Email: [hhrose@hotmail.com](mailto:hhrose@hotmail.com).

Ms. Kathy Bennett, City Clerk, City of Menifee, 29714 Haun Road, Menifee, CA 92586.  
Phone: (951) 672-6777. Email: [kbennet@cityofmenifee.us](mailto:kbennet@cityofmenifee.us).

Ms. Kristine Murray, City Councilmember, City of Anaheim, 2401 East Katella Avenue, Suite 300, Anaheim, California 92806. Phone: (714) 940-6347 Email: [kmurray@willdan.com](mailto:kmurray@willdan.com)

Mr. Michael E. Smith, Partner, Lozano Smith, 7404 North Spalding Ave., Fresno, CA 93720, (559)431-5600, [MSmith@lozanosmith.com](mailto:MSmith@lozanosmith.com).

Ms. Marguerite Leoni, Partner, Nielsen, Merksamer, Parrinello, Gross & Leoni, 2350 Kerner Boulevard, Suite 250, San Rafael, CA 94901, (415)634-6840, [mleoni@nmgovlaw.com](mailto:mleoni@nmgovlaw.com) (or ask for Mr. Chris Skinnell)



## National Demographics Corporation

Ms. Lucinda Aja, City Clerk, City of Buckeye, Arizona. 100 N Apache Rd, Suite A, Buckeye, AZ 85326. Phone (623) 349-6007. Fax (623) 349-6098. EMail: laja@buckeyeaz.gov.

### Additional Analysis

NDC is happy to assist with any additional analysis that the client requests at our standard hourly rates:

Principal (Dr. Douglas Johnson) .....\$200 per hour  
Vice President (Justin Levitt).....\$125 per hour  
Senior Analyst.....\$75 per hour  
Analyst / Clerical.....\$50 per hour

Dr. Johnson is also available for deposition and/or testimony work if needed, at \$250 per hour.

### Requested Payment terms:

NDC requests that one-half payment be made at project start and one-half at the conclusion.

### Conclusion

Since its founding NDC has been the preeminent company in the nation devoted to local election systems. To summarize:

- NDC, founded in 1979, has a demonstrated record of financial solvency.
- NDC's hardware and software resources were specially designed and acquired for districting and redistricting purposes.
- NDC's highly respected personnel have impeccable credentials in each aspect of the districting and redistricting processes.
- NDC's suggested approach has been tested in many jurisdictions.
- Any NDC client can be contacted for testimonials and reference.
- NDC has more experience in the field of municipal political election systems than any other company of which NDC is aware.
- NDC has demonstrated experience over many years in working with the press and media on local election system issues.
- NDC possesses fully up-to-date and highly effective geographic retrieval systems with applications specifically designed for districting and redistricting.
- Neither the Justice Department nor any Court has ever rejected any local government districting or redistricting plan submitted by NDC.

It should be clear that NDC has all of the resources of experience, technical expertise, and legal/political know-how to assist the Town in its current effort. NDC looks forward to the opportunity to work with the Town on this project.