



Town Council Agenda Report

Date: April 23, 2019 Item No. 4
To: Honorable Mayor and Town Council
Subject: PROFESSIONAL SERVICES AGREEMENT FOR HOUSING CONSULTANT
From: Douglas Robertson, Town Manager
Submitted by: Lori Lamson, Assistant Town Manager
Housing Division
Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve a Professional Services Agreement for a consultant to provide administrative support in the Housing Division.

SUMMARY:

The Town routinely contracts with service providers to compliment Town staffing and to provide a concentrated level of professional expertise on certain areas. For example, the Town contracts for engineering, building and safety, legal, and certain housing activities already, including RRLP construction inspections and some annual HUD reports. The Town has contracted with MDG since August 2017 for housing staff support. The term of this contract will extend their existing services through June 30, 2022.

ANALYSIS:

This is a continuation of a professional services agreement approved by the Town on August 8, 2017. Currently the Housing Division is run by one person using only half of her time and overseen by the Assistant Town Manager. In past years the administration the Housing Division, including reporting, finance, overseeing the CDBG and HOME programming has been done by 3-4 full-time Town employees. With retirements and resignations, these positions have not been filled and we have relied on contract services to fill in the gaps in staffing needs. This allows the Town to have flexibility in staffing needs to compliment the work load and the current funding.

In addition to Housing administration assistance, the consultant would also be providing construction management assistance for CDBG funded capital projects that can include

park improvements, ADA accessibility projects, sewer projects etc. for qualified areas within the Town.

MDG has proven to be a very competent consultant with a high level of proficiency to provide flexible part-time service hours for Town-administered Community Development Block Grant (CDBG) and HOME Investment Partnerships programs and projects.

FISCAL IMPACT:

The cost of contracting with a housing consultant is a budgeted expense in the current budget and is proposed in the draft 19/20 Action Plan and Town Budget under administration expenses under both CDBG and HOME funds.

Attachments:

1. Professional Services Agreement

TOWN OF APPLE VALLEY

PROFESSIONAL SERVICES AGREEMENT

MDG ASSOCIATES, INC.

This Agreement is made and entered into this 23rd day of April, 2019, 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 MDG Associates, Inc. a corporation, with its principal place of business at 10722 Arrow Route, Suite 822, Rancho Cucamonga, CA 91730 (“Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

1. RECITALS.

1.1 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 administrative services for HUD-funded programs and services to cities and agencies, is licensed in the State of California, and is familiar with the plans of Town.

1.2 Project. Town desires to engage Consultant to render such services for the administration of federally-funded HUD programs, including CDBG and HOME grant projects and construction management of these federally funded capital projects (“Project”) as set forth in this Agreement.

2. TERMS.

2.1 Scope of Services and Term.

2.1.1 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 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, Exhibit “A” attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

2.1.2 Term. The term of this Agreement shall be from April 23, 2019 to June 30, 2022, or until terminated in accordance with Section 3.4 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.

2.2 Responsibilities of Consultant.

2.2.1 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.

2.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Scope of Services set forth in Exhibit "A" and Scope of Fees 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.

2.2.3 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: Rudy E. Munoz, President,

MDG Associates Inc. and Lori Lamson, Assistant Town Manager, Town of Apple Valley.

2.2.5 Town's Representative. The Town hereby designates the Assistant Town Manager, 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.

2.2.6 Consultant's Representative. Consultant hereby designates Rudy E. Munoz, or 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 their 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.

2.2.7 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.

2.2.8 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.

2.2.9 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.

2.2.9.1 *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.

2.2.9.2 *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.

2.2.10 Insurance.

2.2.10.1 *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.

2.2.10.2 *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.

2.2.10.3 *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 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.

2.2.10.5 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.

2.2.10.6 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.

2.2.10.7 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.

2.2.10.8 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.

2.2.10.9 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.

2.2.11 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.

2.2.12 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 four (4) years from the date of final payment under this Agreement.

2.3 Fees and Payments.

2.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed 1500 hours (approximately 30 hours per week on average), without written approval of Town Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

2.3.2 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.

2.3.3 Reimbursement for Expenses. Consultant shall only be reimbursed for expenses as set forth in Exhibit "A"; no other expenses shall be reimbursed unless authorized in writing by Town.

2.3.4 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.

2.3.5 Prevailing Wages. Not applicable.

2.4 Termination of Agreement.

2.4.1 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 Council Meeting Date: 04/23/2019 rendered to Town, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

2.4.2 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.

2.4.3 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. Ownership of Materials and Confidentiality.

2.5.1 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.

2.5.2 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 professionals other than Consultant or its subconsultants, or those provided to Consultant by the Town.

2.5.3 Right to Use. 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.

2.5.4 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.

2.5.5 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 publication 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.

2.5.6 Copyright Materials. Consultant will be providing proprietary documents, materials, written programs, forms, policies and procedures (collectively the “Materials”) for use by Town pursuant to this Agreement. The ownership of all of the Materials shall remain exclusively with Consultant. During the term of this Agreement, Town shall have the right to use the Materials. Nothing herein shall grant Town any right, title, or interest in Consultant’s protected Materials, other than as provided herein. At no time during or after the term of this Agreement shall Town challenge or assist others to challenge Consultant’s protected Materials or the registration thereof or attempt to register any materials that would infringe upon those of Consultant. If requested to do so, Town agrees to legibly and durably affix to all Materials, notices in compliance with applicable copyright and trademark laws, including but not limited to the use of the symbol “©” or similar symbols. Town shall immediately notify Consultant in writing of any actual or potential infringement of the Materials of which Town becomes aware. Town agrees to take any reasonable action requested by Consultant to preserve and protect the copyright protection of the Material. Any new use, modification, or enhancement of the Materials or any variation thereof, shall belong exclusively to Consultant and Town does hereby assign, sell, and transfer to Consultant any rights in the same.

2.6 General Provisions.

2.6.1 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: MDG Associates, Inc.
Rudy E. Munoz, President
10722 Arrow Route, Suite 822
Rancho Cucamonga, CA 91730

Town: Town of Apple Valley
Lori Lamson, Assistant Town Manager
14955 Dale Evans Parkway
Apple Valley, California 92307

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.

2.6.2 Indemnification.

2.6.2.1 *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.

2.6.2.2 *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 2.6.2.1 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.

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

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

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

2.6.6 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.

2.6.8 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.

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

2.6.10 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.

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

2.6.12 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.

2.6.13 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.

2.6.15 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.

2.6.16 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.

2.6.17 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

MDG ASSOCIATES, INC.

By: _____
Larry Cusack
Mayor

By: _____
Rudy E. Munoz
President

ATTEST:

Ms. La Vonda M. Pearson
Town Clerk

APPROVED AS TO CONTENT:

Douglas B. Robertson
Town Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
Thomas Rice
Town Attorney

EXHIBIT "A"

SCOPE OF SERVICES

**PROPOSAL TO PROVIDE ADMINISTRATIVE SUPPORT SERVICES FOR HUD-FUNDED
PROGRAMS**

DATED MARCH 2019

SECTION III. OVERVIEW, APPROACH AND SCOPE OF WORK

OVERVIEW AND APPROACH

MDG implements a team approach for the administration and implementation of HUD entitlement grant programs. This approach allows us to control costs to the client by having lower level staff complete tasks that do not require a senior level staff member to complete. This team approach also allows us to assign individuals with expertise in certain areas to complete those tasks. The work program for each city/client varies depending on the city's/clients' needs. MDG performs a large number of the tasks on-site whenever possible with tasks not requiring our presence at city halls/client's office being performed from our office.

MDG proposes to meet with Town of Apple Valley staff on a regular basis to provide staff with a status on all projects and to discuss issues relevant to the programs or projects. We propose to provide services on-site one day per week (or as required to complete assigned tasks) and at our corporate headquarters as required by Town of Apple Valley. We anticipate serving as an extension of Town of Apple Valley staff and will provide scheduling that meets the needs of Town of Apple Valley. We will make ourselves available during non-scheduled hours should the need arise by providing staff with our cell phone numbers.

MDG will provide Town of Apple Valley regular reports that provide the status of each project, the accomplishments made during the prior month and year-to-date.

As a result of the successful systems that we have developed in the administration of CPD Programs, MDG was selected by HUD Headquarters as part of a national workgroup to develop and establish program systems and crosswalks that were to be used by grantees to assist in the administration of their CPD Programs.

Note: We utilize proprietary (Copyright protected) documents that will be made available for use by the Town of Apple Valley if we are selected for this contract.

SCOPE OF SERVICES

MDG proposes to provide staffing and other resources required to provide administrative support services for construction project management and residential rehabilitation HUD-Funded programs of the Town of Apple Valley's CDBG and HOME programs and projects. Those duties include, but not limited to:

CDBG Project Management Services

MDG is available to perform some or all of the following tasks for the CDBG Project Management services;

1. Coordinate with architect and engineers during the design phase of the project to ensure the City's needs are being addressed.
2. Coordinate the preparation of the construction plans and bid specifications with the architect and engineers in accordance with the City's needs.
3. Coordinate the processing and plan check of the construction plans and bid specifications with the City's Building Department and Public Works Department, as applicable.
4. Assist in the development of bid documents and specifications for contractor bidding in accordance with City standards and procedures as well as all HUD requirements
5. Coordinate the bid process for the project(s) and respond to any Request for Information (RFI's) by contractors during the bidding process. Responses may require coordination with architect and engineers.
6. Assist the City in the review of contractor bids and in the selection of a contractor based on the bid selection requirements.
7. Review contractor and subcontractors for Federal project eligibility on Contractors State License Board (CSLB), Department of Industrial Relations (DIR) and System for Award Management (SAM).
8. Coordinate the processing of the agreement between the contractor and the City in accordance with City policies and procedures.
9. Coordinate with the City's Building Department and Public Works Department, as applicable, to ensure that construction work is progressing on schedule and in accordance with construction drawings and specifications.
10. Work with the City's Building Department and Public Works Department in reviewing and processing contractor payment requests on a timely manner.
11. Coordinate with other MDG staff members on the completion of all labor compliance requirements under Davis-Bacon and Related Acts and State Prevailing wages, as applicable.
12. Provide regularly scheduled status reports to City staff and attend any miscellaneous meetings required for the project to bring it to compliance.
13. Coordinate with labor compliance personnel/MDG staff the close-out of the project.
14. Other duties as assigned.

Housing Rehabilitation Services

MDG is available to perform some or all of the following tasks for the housing rehabilitation projects;

1. Application: Distribute and intake program applications. Review application and documentation submissions for completeness, perform follow-up on incomplete submissions, complete income determination worksheet and determine eligibility to participate.
2. Environmental Review: Obtain property information report, prepare HUD Appendix "A" Environmental Form and obtain required signature, prepare form for submission to SHPO requesting historical preservation clearance.

3. Appraisal: For HOME-assisted properties, order appraisal or conduct City processing for determining home value per 24 CFR 92.254(a)(2)(iii) requirements.
4. Coordinate Initial Property Inspection: Coordinate on-site inspection of the applicant's property, obtain photo documentation of all pre-rehabilitation on-site conditions, identify all health and safety deficiencies, determine eligible rehabilitation items under current CDBG and/or HOME (as applicable) program guidelines, perform preliminary lead-based paint review.
5. Coordinate Preparation of Work Description: Based on the initial inspection and photo documentation, coordinate with the City's Building Department for the development of a work scope which provides a detailed description of the work to be performed in conformance with industry standards and code compliance, and which provides the basis for a bid document.
6. Environmental Testing: Based on the age of the property and the proposed scope of work, coordinate for inspection of the property by the City's 3rd party environmental consultant for the potential presence of lead-based paint and asbestos. Review lead-based paint and asbestos reports and integrate all required remediation measures into the draft work scope. Prepare cover letters and transmit all environmental testing reports to owner.
7. Work Scope Approval: Transmit the draft work scope to the owner and obtain approval. Prepare a pre-bid construction cost estimate based on the approved scope of work.
8. Bid Procedure: Prepare bid packages, transmit to owner for distribution to contractors, respond to contractor inquiries regarding scope of work, receive and review bids, reconcile bids with work scope and pre-bid estimate, follow-up with bidders as necessary to obtain clarifications, review insurance submissions, perform Contractors State License Board verifications of licensing eligibility, perform System for Award Management reviews for contracting eligibility, prepare bid summary form, select lowest bidder, prepare Notice of Bid Results and transmit to all submitting contractors.
9. Funding Approval: Prepare Loan/Grant Report and Determination Form for the Rehabilitation Screening Committee, coordinate RSC meeting, attend RSC meeting, advise applicant and contractor of RSC determination, if applicable.
10. Prepare Loan Documents: Prepare loan docs, improvement agreement, and loan acceptance agreement.
11. Prepare Grant Documents: Prepare grant acceptance agreement, if applicable
12. Prepare Construction Agreements: Prepare construction agreement w/attachments.
13. Pre-Construction Meeting: Coordinate with owner and contractor for pre-construction meeting date, conduct pre-con meeting, perform job walk describing repairs to be performed and completed repair expectations, sign loan/grant documents and construction agreement, notarize documents as necessary. Transmit loan documents to city repository for storage.
14. Construction Progress Monitoring: Perform weekly site visits to ensure that contract conditions are being met, respond to owner and contractor concerns, photo document and provide narrative summary of construction progress.
15. Process Payment Requests: Review contractor invoices and lien releases; verify completion of work scope items for which payment is being sought for conformance with contract requirements. Obtain owner acceptance and approval of work and payment request, and process payment with city.

16. Project Closeout: Inspect and photo document completed repairs, schedule LBP Clearance testing, as required. Prepare Notice of Completion, obtain owner signature, and transmit for recordation. Contact owner after expiration of NOC lien period to verify non-receipt of lien notifications, obtain Unconditional Release Form from contractor and transmit retention payment.

Additional services are available upon request:

Notary Services: Perform notary services. MDG's staff members hold a current notary commission.

EXHIBIT "B"

SCHEDULE OF HOURLY BILLING RATES

**PROPOSAL TO PROVIDE ADMINISTRATIVE SUPPORT SERVICES FOR HUD-FUNDED
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DATED MARCH 2019

EXHIBIT "A"

SCHEDULE OF HOURLY BILLING RATES

Rates effective as of July 1, 2017

Staff Title:	2018-2019 Rates	2019-2020 Rates	2020-2021 Rates
President	\$110.00/Hr	113.00/Hr	116.00/Hr
Vice President	\$100.00/Hr	102.50/Hr	105.00/Hr
Manager	\$ 90.00/Hr	92.00/Hr	94.00/Hr
Senior Associate	\$ 85.00/Hr	87.00/Hr	89.00/Hr
Associate	\$ 80.00/Hr	82.00/Hr	84.00/Hr
Senior Project Assistant	\$ 65.00/Hr	67.00/Hr	69.00/Hr
Project Assistant	\$ 60.00/Hr	61.50/Hr	63.00/Hr
Secretary	\$ 45.00/Hr	46.00/Hr	47.00/Hr

Note: the above rates account for the upcoming three-year period. For additional years, contact MDG Associates, Inc.

Note: If MDG staff is requested by the City to attend a meeting not considered a part of this proposal or on a day in which a consultant is not scheduled to be on site, the City shall be billed for the time it takes to drive to and from the City and its corporate office.

REIMBURSABLE ITEMS:

- Project Supplies At Cost plus 10% surcharge (when applicable)
- Prints/Reproductions At Cost plus 10% surcharge (when applicable)
- Postage and Delivery At Cost plus 10% surcharge (when applicable)