



Town Council Agenda Report

Date: May 26, 2020 Item No. 11

To: Honorable Mayor and Town Council

Subject: THIRD AMENDMENT TO THE AGREEMENT FOR TOWN ATTORNEY LEGAL SERVICES WITH BEST BEST & KRIEGER, LLP

From: Douglas Robertson, Town Manager

Submitted by: Douglas Robertson, Town Manager

Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Approve and authorize the Town Manager to execute Third Amendment to the Agreement to provide Town Attorney Legal Services to the Town of Apple Valley.

BACKGROUND:

BB&K has served as Town Attorney for the Town since 2008 under a legal services agreement dated July 15, 2008. The agreement originally provided for a capped retainer at \$20,000 and rates for specialized legal services ranging from \$150 to \$285 per hour subject to an annual cost of living adjustment. The agreement has been amended twice.

The First Amendment, dated August 14, 2012, reduced the monthly capped retainer amount to \$18,000 per month subject to an annual cost of living adjustment. In addition, the First Amendment enabled the provision of specialized legal services at rates ranging from \$156 to \$298 per hour subject to an annual cost of living adjustment. By fiscal year 2017/18, based on the annual cost of living adjustments, the monthly retainer had risen to \$19,428 per month and specialized legal services were offered at rates ranging from \$169 to \$321 per hour.

The Second Amendment, dated May 8, 2018, reduced the monthly capped retainer by ten percent (10%) from \$19,428 to \$17,485 per month and froze that retainer amount for two fiscal years – 2018/19 and 2019/20. In addition, the Second Amendment froze rates for specialized legal services for two fiscal years. The Second Amendment also revised the list of specialized legal services to expressly reference telecommunications and employee benefits work. Furthermore, the Second Amendment authorized the Town to

utilize BB&K's services to assist with lengthy or complex PRA requests at an established blended hourly rate below the standard rate for attorneys.

The proposed Third Amendment, if adopted, would continue the freeze on the monthly retainer and rates for specialized legal services for fiscal year 2020/21.

Fiscal Impact:

The cost of living adjustment for fiscal year 2020/21 is estimated to be around 2.3% (based on the most recent 12-month published report for our region, i.e., April 2019 to March 2020). Adoption of the proposed Third Amendment would result in estimated savings in fiscal year 2020/21 of an estimated \$4,825.92 for the retainer and unknown additional savings in the cost of specialized legal services.

Attachments:

- A. Third Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley (Proposed).
- B. Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley dated July 15, 2008.
- C. First Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley dated August 14, 2012.
- D. Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley dated May 8, 2018.

**THIRD AMENDMENT TO THE AGREEMENT TO PROVIDE
TOWN ATTORNEY LEGAL SERVICES
TO THE TOWN OF APPLE VALLEY**

This Third Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley (“Third Amendment”) is entered into between the Town of Apple Valley (“Town”) and Best Best & Krieger LLP (“BB&K”) on May 26, 2020. The Town and BB&K are collectively referred to herein as the “Parties.”

RECITALS

- A. The Town and BB&K entered into that certain Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated July 15, 2008 (“Agreement”), setting forth the terms and conditions of BB&K’s legal representation of the Town as Town Attorney (“Services”).
- B. The Town and BB&K entered into that certain Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated August 14, 2012 (“First Amendment”) relating to compensation for legal services.
- C. The Town and BB&K entered into that certain Second Amendment to the Agreement on May 8, 2018 to reduce the current monthly retainer balance by ten percent (10%) from \$19,428 per month to \$17,485 per month, to freeze the amount of the monthly retainer and the rates for specialized legal services for fiscal years 2018/19 and 2019/20, to revise the list of specialized legal services to provide greater specificity in line with current practice, and to allow for the provision of ‘as needed’ Public Records Act assistance.
- D. The Town and BB&K now desire to enter into this Third Amendment to continue to freeze the amount of the monthly retainer and the rates for specialized legal services for fiscal year 2020/21.

NOW, THEREFORE, the Parties agree as follows:

- I. This Third Amendment shall take effect on July 1, 2020.
- II. Section 3 of the Agreement, as amended by the First Amendment and Second Amendment, is hereby revised to read in its entirety as follows:

“3. TOWN ATTORNEY SERVICES AND COMPENSATION

BB&K shall receive compensation for all Services rendered by BB&K attorneys and personnel providing Town Attorney Services under this Agreement at the rates set forth below, with the exception of bond counsel and third party reimbursable services, if applicable, as follows:

All General Legal Services will be compensated at the fully capped flat rate of \$17,485 per month and those General Legal Services will be fully covered by this payment.

Rates will be automatically adjusted annually on July 1st of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set

forth for the Los Angeles-Anaheim-Riverside area. As part of the Town’s annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the amount of such adjustment for the subsequent fiscal year. Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19, 2019/20, and 2020/21.”

III. Except as otherwise specifically set forth in this Third Amendment, all of the provisions of the Agreement, as amended by the First Amendment and Second Amendment, shall remain in full force and effect.

TOWN OF APPLE VALLEY

BEST BEST & KRIEGER LLP

By: _____
Douglas B. Robertson
Town Manager

By: _____
Thomas A. Rice

Attest:

By: _____
La Vonda M-Pearson
Director of Government Services / Town Clerk

**AGREEMENT TO PROVIDE TOWN ATTORNEY LEGAL SERVICES
TO THE TOWN OF APPLE VALLEY**

This Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley. ("the Agreement") is made as of the 15th day of July, 2008, by and between the Town of Apple Valley, a California municipal corporation ("Town"), and Best Best & Krieger LLP, a limited liability partnership engaged in the practice of law ("BB&K"). The Town wishes to engage the services of BB&K as Town Attorney on the terms set forth below.

1. TERM.

The term of this Agreement shall commence on July 15, 2008, and shall continue in full force and effect until terminated in accordance with Section 11 herein.

2. SCOPE OF SERVICES; DESIGNATION OF TOWN ATTORNEY.

BB&K shall serve as Town Attorney and shall perform legal services as may be required from time to time by the Town and its officers as set forth by this Agreement ("Services"). As part of the Services to be performed hereunder, BB&K shall be responsible to provide General Legal Services for the Town which shall include, but not limited to the preparation and attendance at all regular, adjourned regular and special Town Council and Redevelopment Agency meetings, and also such Planning Commission and/or other Town related agency, board, commission or committee meetings as deemed necessary and required by the Town Manager, and attendance at other Town business and management meetings, if required by the Town Manager. General Legal Services also include the preparation as necessary, and review of all Town ordinances and resolutions, together with such agreements, deeds and other legal documents as requested by the Town Manager. General Legal Services shall also include rendering to officers and employees of the Town legal advice and opinions on all matters legally affecting the Town, the Town Council, the Redevelopment Agency, the Town Planning Commission, the Town departments and/or other Town related agencies, boards, commissions or committees, as directed by the Town Council or the Town Manager. General Legal Services shall also include all other legal services, other than Specialized Legal Services, as required by the Town Council or Town Manager.

A "Request For Town Attorney Services" is attached and incorporated herein for the Town's use, to request Services.

BB&K shall be designated as Town Attorney and shall be responsible for the performance of services under this Agreement and the supervision of services performed by other members of BB&K. John E. Brown of BB&K shall act for all purposes as the Town Attorney as BB&K's designated Partner. No change in this assignment shall be made without the prior approval and consent of the Town Council.

3. TOWN ATTORNEY SERVICES AND COMPENSATION.

BB&K shall receive compensation for all Services rendered by BB&K attorneys and personnel providing Town Attorney Services under this Agreement at the rates set forth

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below, with the exception of bond counsel and third party reimbursable services, if applicable, as follows:

All General Legal Services will be compensated at the fully-capped flat rate of \$20,000 per month, and those General Legal Services will be fully covered by this payment.

Rates will be automatically adjusted annually on July 1st of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set forth for the Los Angeles-Anaheim-Riverside area. As part of the Town's annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the amount of such adjustment for the subsequent fiscal year.

4. SPECIALIZED LEGAL SERVICES AND COMPENSATION.

Specialized Legal Services, which BB&K and the Town Council or the Town Manager agree are outside the scope of General Legal Services, will be provided in addition to, and billed separately from, the General Legal Services. Specialized Legal Services, with the Town Council's or Town Manager's prior written approval, shall include the following: litigation, including eminent domain, complex legal review and analysis of environmental assessments under the California Environmental Quality Act or the National Environmental Policy Act, water rights and transfers, and complex labor and protracted labor and employment negotiations, litigation and public employee dismissal and release labor and employment services, and will be provided at the hourly rates listed below.

Partner	\$285/hr
Of Counsel	\$275/hr
Senior Associate	\$250/hr
Associate	\$235/hr
Paralegal/Clerk	\$150/hr

Rates will also be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3.

Fees for bond counsel services in connection with the financing of public facilities shall be contingent and based on the size of the issue. Unless otherwise agreed in writing by Town, BB&K shall be compensated for such services solely from the proceeds of the sale of the bonds, certificates of participation or other obligations issued at BB&K's then current bond counsel rates, should the Town choose to engage the bond counsel services of BB&K.

5. THIRD PARTY REIMBURSEMENTS

All legal services provided to the Town for which the Town elects to receive reimbursement from a developer or other third party beneficiary shall be billed at the regular private sector rates for the attorneys involved. Those rates shall be shown on the firm's rate schedule on file with the Town, and ordinarily change from year to year. BB&K will provide annually updated rate schedules for private sector rates. The decision by the Town to seek Third Party reimbursement shall be made by the Town exclusively.

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6. REIMBURSEMENT OF COSTS

BB&K shall receive reimbursement of reasonable and necessary costs incurred by BB&K on behalf of Town, as well as other expenses, in addition to fees for services. Such reimbursable costs include, but are not limited to, automobile mileage (limited to travel to and from the Ontario office) at the current IRS rate per mile, actual expenses away from the Ontario office on Town business, extraordinary printing and photocopy charges, long distance telephone and facsimile charges, tolls, court fees, computerized research time (e.g. Lexis or Westlaw), extraordinary mail or delivery costs (e.g. courier overnight, express delivery) and similar costs relating to Town Attorney legal services that are generally chargeable to a client. BB&K shall not charge separately for secretarial, administrative or other "overhead" charges.

7. BILLING

BB&K shall submit to the Town a monthly statement of account for all services and costs. The Town shall review BB&K's monthly statements and pay BB&K for all Services rendered and costs incurred, as provided for in this Agreement, on a monthly basis.

8. INCREASES TO COMPENSATION.

BB&K or the Town Council may initiate consideration of a rate increase for legal services. Such rate increase may be approved by the Town Council in its sole and absolute discretion.

9. COOPERATION WITH TOWN COUNCIL AND TOWN MANAGER.

BB&K shall work cooperatively with the Town Council and Town Manager and keep them informed on all matters of importance as they arise.

10. INSURANCE COVERAGE.

BB&K carries errors and omissions insurance with Lloyd's of London. After a standard deductibility amount, this insurance provides coverage which exceeds the amount required by the State of California.

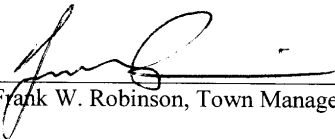
11. TERMINATION OF AGREEMENT AND LEGAL SERVICES.

This Agreement may be terminated at any time upon thirty (30) days written notice from either Party, with or without cause. In the event of such termination, BB&K shall be paid for all services (and reimbursable expenses) authorized by the Town and performed up through and including the effective date of termination.

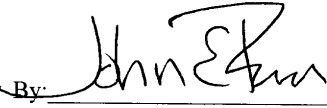
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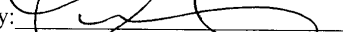
IN WITNESS WHEREOF, the Town and BB&K have executed this Agreement as of the date first written above.

TOWN OF APPLE VALLEY

By: 
Frank W. Robinson, Town Manager

BEST BEST & KRIEGER LLP

By: 
John E. Brown, Partner
Town Attorney

Attest: 
By: 
LaVonda Pearson, Town Clerk

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REQUEST FOR TOWN ATTORNEY SERVICES

TOWN OF APPLE VALLEY

TODAY'S DATE: _____ DATE NEEDED: _____

TO: _____ FROM: _____

TYPE OF SERVICE REQUESTED:

- MEMO CC: _____
- ORAL RESPONSE
- OTHER: _____

SPECIFIC ISSUES/QUESTIONS:

[ATTACH ADDITIONAL PAGES IF NECESSARY]

REIMBURSEABLE? (I.E., FROM DEVELOPER OR OTHER 3RD PARTY) YES NO

APPROVED BY:

_____ DATE: _____

For Town Attorney Use

Received by: _____ Date: _____

Assigned to: _____ Date: _____

Estimated Return Date: _____ BB&K matter #: _____

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BEST BEST & KRIEGER
ATTORNEYS AT LAW

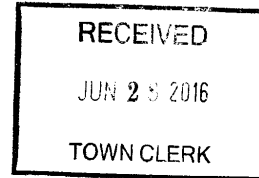
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William Hendertilo
(951) 826-8390
william.hendertilo@bbklaw.com

June 27, 2016



La Vonda Pearson
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307-3061

Re: Annual Notice of Automatic Increase in Legal Services Rates based upon CPI

Dear Valued Best Best & Krieger LLP Client,

In accordance with our current agreement, the hourly rates are to adjust on July 1st of each year, in accordance with the All Urban Consumer Price Index, Los Angeles-Riverside-Orange County, CA, most recent 12-month published. The Index has increased by 1.5%, therefore, the hourly rates will be:

Monthly Fee & Cost Retainer: \$18,972.00

<u>Basic Services</u>	<u>Rate/Hr.</u>	<u>Special Services</u>	<u>Rate/Hr.</u>
Partner	\$ 255.00	Partner	\$ 314.00
Of Counsel	\$ 245.00	Of Counsel	\$ 303.00
Associate	\$ 222.00	Associate /	\$ 275.00
Associate 2	\$ 211.00	Associate 2	\$ 259.00
Paralegal / Research Analyst /		Paralegal / Research Analyst /	
Clerk	\$ 141.00	Clerk	\$ 165.00
Admin Asst.	\$ 109.00	Admin Asst.	\$ 111.00

These rates will automatically be adjusted on July 1, 2016.

Best Best & Krieger sincerely appreciates your continuing loyalty and the choice of our firm for your legal services. If you have any questions about this or any of our billing policies, please contact your BB&K attorney, John Brown.

Sincerely,

William Hendertilo
Assistant Billing Manager
for BEST BEST & KRIEGER LLP

**AMENDMENT TO THE AGREEMENT TO PROVIDE
TOWN ATTORNEY LEGAL SERVICES
TO THE TOWN OF APPLE VALLEY**

This Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley (“Amendment”) is entered into between the Town of Apple Valley (“Town”) and Best Best & Krieger LLP (“BB&K”). The Town and BB&K are collectively referred to herein as the “Parties.”

RECITALS

A. The Town and BB&K entered into that certain Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated July 15, 2008 (“Agreement”), setting forth the terms and conditions of BB&K’s legal representation of the Town as Town Attorney (“Services”).

B. The Parties desire to approve this Amendment to the Agreement relating to BB&K’s compensation for legal services.

NOW, THEREFORE, the Parties agree as follows:

1. Compensation.

(a) Basic Legal Services. All General Legal Services will be compensated at the fully capped flat rate of \$18,000 per month (“Amended Rate”) and those General Legal Services will be fully covered by this payment. The Parties agree that the Amended Rate will take effect for all General Legal Services, as described herein and in the Agreement, rendered by BB&K to Town beginning July 1, 2012.

As stated in the Agreement, rates for the Services will be automatically adjusted annually on July 1st of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set forth for the Los Angeles-Anaheim-Riverside area. As part of the Town’s annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the amount of such adjustment for the subsequent fiscal year.

2. Specialized Legal Services and Compensation.

Specialized Legal Services, which BB&K and the Town Council or the Town Manager agree are outside the scope of General Legal Services, will be provided in addition to, and billed separately from, the General Legal Services. Specialized Legal Services, with the Town Council’s or Town Manager’s prior written approval, shall include the following: litigation, including eminent domain, complex legal review and analysis of environmental assessments under the California Environmental Quality Act or the National Environmental Policy Act, and

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water rights and transfers, litigation and public employee dismissal and release labor and employment services, and will be provided at the hourly rates listed below.

Partner	\$298/hr
Of Counsel	\$288/hr
Senior Associate	\$261/hr
Associate	\$246/hr
Paralegal/Clerk	\$156/hr

Rates will also be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3 of the Agreement and Section 1 of this Amendment.

Fees for bond counsel services in connection with the financing of public facilities shall be contingent and based on the size of the issue. Unless otherwise agreed in writing by Town, BB&K shall be compensated for such services solely from the proceeds of the sale of the bonds, certificates of participation or other obligations issued at BB&K's then current bond counsel rates, should the Town choose to engage the bond counsel services of BB&K.

3. Except as otherwise specifically set forth in this Amendment, all of the provisions of the Agreement shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

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SIGNATURE PAGE TO THE
AMENDMENT TO THE AGREEMENT TO PROVIDE TOWN ATTORNEY LEGAL
SERVICES TO THE TOWN OF APPLE VALLEY

Dated this 14 day of August, 2012.


TOWN OF APPLE VALLEY

By: 
FRANK ROBINSON
Town Manager

BEST BEST & KRIEGER LLP

By: 
John E. Brown
Partner

Attest:

By: 
LA VONDA PEARSON
Town Clerk

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**SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE
TOWN ATTORNEY LEGAL SERVICES
TO THE TOWN OF APPLE VALLEY**

This Second Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley ("Second Amendment") is entered into between the Town of Apple Valley ("Town") and Best Best & Krieger LLP ("BB&K"). The Town and BB&K are collectively referred to herein as the "Parties."

RECITALS

A. The Town and BB&K entered into that certain Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated July 15, 2008 ("Agreement"), setting forth the terms and conditions of BB&K's legal representation of the Town as Town Attorney ("Services").

B. The Town and BB&K entered into that certain Amendment to the Agreement to Provide Town Attorney Legal Services to the Town of Apple Valley, dated August 14, 2012 ("First Amendment") relating to compensation for legal services.

C. The Parties desire to approve this Second Amendment to the Agreement to reduce the current monthly retainer balance by ten percent (10%) from \$19,428 per month to \$17,485 per month, to freeze the current rates for the monthly retainer and specialized legal services for fiscal years 2018/19 and 2019/20, to revise the list of specialized legal services to provide greater specificity in line with current practice, and to allow for the provision of 'as needed' Public Records Act assistance.

NOW, THEREFORE, the Parties agree as follows:

- I. This Second Amendment shall take effect on July 1, 2018.
- II. Section 3 of the Agreement, as amended by the First Amendment, is hereby revised to read in its entirety as follows:

"3. TOWN ATTORNEY SERVICES AND COMPENSATION

BB&K shall receive compensation for all Services rendered by BB&K attorneys and personnel providing Town Attorney Services under this Agreement at the rates set forth below, with the exception of bond counsel and third party reimbursable services, if applicable, as follows:

All General Legal Services will be compensated at the fully capped flat rate of \$17,485 per month and those General Legal Services will be fully covered by this payment.

Rates will be automatically adjusted annually on July 1st of each fiscal year hereafter for cost of living as shown by the U.S. Department of Labor in its All Urban Consumer Index as set forth for the Los Angeles-Anaheim-Riverside area. As part of the Town's annual budget review process BB&K shall meet and confer with the Town Manager to calculate and identify the

amount of such adjustment for the subsequent fiscal year. Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19 and 2019/20.”

III. Section 4 of the Agreement, as amended by the First Amendment, is hereby revised to read as follows:

“4. SPECIALIZED LEGAL SERVICES AND COMPENSATION

Specialized Legal Services, which BB&K and the Town Council or the Town Manager agree are outside the scope of General Legal Services, will be provided in addition to, and billed separately from, the General Legal Services. Specialized Legal Services, with the Town Council’s or Town Manager’s prior written approval, shall include the following:

- Litigation, including eminent domain;
- Complex legal review and analysis of development projects including environmental assessments under the California Environmental Quality Act or the National Environmental Policy Act;
- Water rights and transfers;
- Public employee benefits and public employee dismissal and release labor and employment services; and
- Telecommunications and cable franchise issues.

Specialized Legal Services will be provided at the hourly rates listed below:

- Partner \$321/hr
- Of Counsel \$311/hr
- Senior Associate \$282/hr
- Associate \$265/hr
- Paralegal/Clerk \$169/hr

Rates will also be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3. Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19 and 2019/20.

Fees for bond counsel services in connection with the financing of public facilities shall be contingent and based on the size of the issue. Unless otherwise agreed in writing by Town, BB&K shall be compensated for such services solely from the proceeds of the sale of the bonds, certificates of participation or other obligations issued at BB&K’s then current bond counsel rates, should the Town choose to engage the bond counsel services of BB&K.

While day-to-day legal advice related to the Public Records Act is addressed under General Legal Services, the Town may at its discretion utilize BB&K on an ‘as needed’ basis to assist the Town Clerk’s Office with responding to lengthy or complex Public Records Act requests. Such assistance may include the uploading of large numbers of documents to BB&K’s systems for collation, review, and production under the Public Records Act. Such services shall be provided at an hourly rate of \$185 for paralegals/clerks and attorneys. As above, rates will be automatically adjusted annually pursuant to the cost of living adjustment discussed in Section 3.

Notwithstanding the foregoing, no cost of living adjustment shall be made for fiscal years 2018/19 and 2019/20.”

IV. Except as otherwise specifically set forth in this Second Amendment, all of the provisions of the Agreement, as amended by the First Amendment, shall remain in full force and effect.

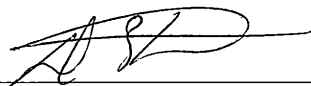
SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE TO
SECOND AMENDMENT TO THE AGREEMENT TO PROVIDE
TOWN ATTORNEY LEGAL SERVICES
TO THE TOWN OF APPLE VALLEY**

Dated this 8th day of May, 2018.

TOWN OF APPLE VALLEY

BEST BEST & KRIEGER LLP

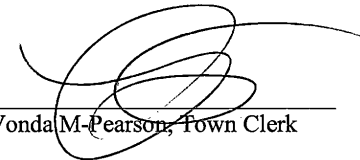
By: 

Douglas B. Robertson, Town Manager

By: 

John E. Brown, Partner

Attest:

By: 

La Vonda M. Pearson, Town Clerk