



Town Council Agenda Report

Date: September 8, 2020 Item No. 9

To: Honorable Mayor and Town Council

Subject: AWARD CONTRACT FOR CONSULTANT TO PREPARE THE HOUSING ELEMENT UPDATE FOR THE 6TH CYCLE 2021-2029

From: Douglas Robertson, Town Manager

Submitted by: Lori Lamson, Assistant Town Manager

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

The Town Council award a contract to Terra Nova Planning and Research Inc. for the preparation of the Housing Element Update for the 6th Cycle between 2021-2029, including the required environmental review and analysis under the California Environmental Quality Act (CEQA).

BACKGROUND

Every eight (8) years every city and county in California is required to prepare an updated Housing Element amending the jurisdictions General Plan. This updated Housing Element must be submitted to the California Department of Housing and Community Development (HCD) for certification. Certification is dependent on incorporating State housing regulations as well as identifying new housing unit opportunities. The exact number of housing units assigned to Apple Valley by the State is referred to as the Regional Housing Needs Assessment (RHNA). This cycle, Apple Valley has a total of 4,274 RHNA units which is a combination of Moderate, above Moderate, Low Income and Very Low Income categories. This is an increase of last cycle which was a total of 3,334 RHNA units. Certification of the Housing Element is contingent on incorporating the RHNA units into the Town's Land Use Plan and complying with all State Housing regulations. Certification is necessary for obtaining certain grants that assist the Town in building roads, parks and other capital projects.

On June 25, 2020 the Town issued a Request for Proposals (RFP) to prepare the 6th Cycle Housing Element Update. The Planning Division received two (2) proposals. After carefully reviewing each response for compliance with the RFP, both proposals were complete and Terra Nova Planning and Research Inc., was the lowest responsive bidder. In addition, Terra Nova has had experience working within the Town on the North Apple

Valley Industrial Specific Plan, the Comprehensive General Plan and Development Code Update, the Climate Action Plan, the 4th and 5th Cycles of the previous Housing Element and a variety of smaller projects including four LAFCO submittals for annexations. Terra Nova has an expansive knowledge of the issues within the Town and are well qualified to complete the work. The following results for the proposals are as follows:

Terra Nova Planning and Research Inc.....	\$63,520.00
4Leaf, Inc.	\$65,618.00

Work will consist of research and data collection, public workshops, communication with HCD, evaluating the Town’s Land Use Plan, preparation of CEQA documents, correspondence and consultation with Tribal interests and public hearings before the Planning Commission and Town Council. The schedule anticipates the completion of the Housing Element by September 2021, which complies with the requirements of completion and submittal of the Housing Element to HCD by October 2021.

ANALYSIS

The proposals for the project were reviewed by staff to ensure inclusion of all necessary requirements for eventual submittal to HCD and certification of the Housing Element. The RFP was reviewed and approved by the Town Council at the June 23, 2020 Town Council Meeting. Both submittals received were considered complete and that Terra Nova Planning and Research, Inc. is considered to be most qualified, and a responsible and responsive in the proposal bidding process.

FISCAL IMPACT

Funding for this project is part of the funds awarded to the Town of Apple Valley through the State of California SB2 Planning Grants Program under the Department of Housing and Community Development. The Town was awarded a total of \$310,000.00, of which all of this contract will be covered under this grant monies.

ATTACHMENTS

Exhibit A – Proposal from Terra Nova Planning and Research, Inc.



Town of Apple Valley

PROPOSAL TO PREPARE

TOWN OF APPLE VALLEY HOUSING ELEMENT UPDATE

Prepared for:

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Prepared by:



Terra Nova Planning & Research, Inc.®

42635 Melanie Place, Suite 101
Palm Desert, CA 92211

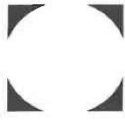
August 2020



Town of Apple Valley Housing Element Update

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TERRA NOVA PLANNING & RESEARCH, INC.®

August 15, 2020

Ms. Lori Lamson
Assistant Town Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

RE: Proposal to Prepare the Town of Apple Valley Housing Element Update

Dear Lori:

Terra Nova Planning & Research is pleased to submit this proposal for the preparation of the Town's 6th Cycle Housing Element Update, for the period from 2021 to 2029. We believe that we are the best qualified firm for this project because:

- We prepared the Town's current Housing Element (5th Cycle), as well as its 4th Cycle update.
- We have prepared Housing Elements for multiple cycles for several desert cities, including Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, La Quinta and the Town of Yucca Valley.
- We prepared the Town's currently adopted General Plan, and have a good understanding of the Town's land use patterns and housing goals for the future.

I will be the Town's prime contact, should we be selected for this project. I can be reached at 760-341-4800, or by email at ncriste@terranovaplanning.com. We look forward to having the opportunity to discuss this proposal with you further. If you have any questions or require additional information, please feel free to contact me.

Sincerely,

Nicole Sauviat Criste
Principal

42635 MELANIE PLACE, SUITE 101, PALM DESERT, CA 92211 (760) 341-4800



I. PAST PERFORMANCE AND REFERENCES

A. Housing Element Projects

Terra Nova has completed Housing Element Updates for many of the cities of the Coachella Valley, and for cities of similar size elsewhere in Riverside and San Bernardino counties. Specifically, we completed 5th Cycle updates for the Town, as well as the cities of Palm Springs, Rancho Mirage, Palm Desert and La Quinta; and 4th Cycle updates for the Town, and the cities of Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, Blythe and Yucca Valley. We have also been retained by the cities of Cathedral City, Rancho Mirage, Palm Desert and La Quinta to prepare their 6th Cycle Housing Element Updates. We are particular proud that our Housing Element clients have relied on us for multiple Housing Elements. We also have a strong track record in working with the Department of Housing and Community Development (HCD) to achieve compliance. Although HCD can be difficult to work with, we have successfully secured HCD approval for all 12 Housing Elements we completed in the 4th and 5th Cycles. We intend to maintain that track record for the Town in this Update.

The following provides descriptions of previous Housing Element projects, with references for each jurisdiction.

City of Palm Desert Housing Element Update

Terra Nova updated the Housing Element for the City of Palm Desert for the 3rd, 4th and 5th Cycle planning periods, and is currently under way to complete the 6th Cycle update. The City has adopted a new General Plan which adds mixed use and downtown core land uses, with greater residential densities, which will be incorporated into the current Update to bolster its land inventory.

Reference: Mr. Ryan Stendell, Director of Community Development, City of Palm Desert, (760) 346-0611

City of Rancho Mirage Housing Element Update

Terra Nova has updated the Housing Element for the City of Rancho Mirage for the last four update Cycles, and is currently under way on the 6th Cycle Update. The primary issue with the current Update is associated with the vacant land inventory, and the City's low-density land use designations. The City's RHNA has increased considerably from the 5th Cycle, and sites within two Specific Plan areas will be critical to securing sufficient sites.

Reference: Mr. Jeremy Gleim, Director of Development Services, City of Rancho Mirage, (760) 328-2266. (Please note that Bud Kopp and Randy Bynder, who were instrumental in the last updates of their Housing Element, have both retired. Mr. Gleim has experience with Terra Nova's work on other projects.)



City of La Quinta Housing Element Update

Immediately following the second comprehensive update of the City's General Plan, Terra Nova was retained to complete the 5th Cycle update for the Housing Element. Issues centered on the land inventory, and required changes and additions to the Zoning Ordinance to allow for greater density. The use of the Mixed Use zone was also critical in demonstrating that the City had sufficient capacity to accommodate its RHNA. The element was certified by HCD and adopted by the City Council. We recently initiated work on the 6th Cycle Update for the City, which will require careful analysis to identify sufficient sites for affordable housing.

Reference: Ms. Cheri Flores, Planning Manager, City of La Quinta, (760) 777-7067.

Town of Apple Valley Housing Element Update

Terra Nova updated the Housing Element for the Town during the 4th Cycle, in conjunction with the General Plan Update, and again for the 5th Cycle update. The Housing Element and General Plan addressed density issues through the creation of a Mixed Use designation, and the expansion of the inventory of High Density lands. The element was certified by HCD and adopted by the Town Council.

Reference: Ms. Lori Lamson, Assistant Town Manager, Community and Development Services, Town of Apple Valley, (760) 240-7000, extension 7204



II. MANAGEMENT PLAN

Because of our long history with the Town, we have gathered and developed extensive background information, including the demographics needed for the Housing Element Update. We also believe that we have a good working relationship with Town staff, and an understanding of the political environment and vision for the future embodied in the General Plan. We believe that this understanding will support the effective completion of the Housing Element Update in a time-efficient and cost-effective manner.

We foresee a close working relationship with Town staff, where we work together in gathering data, formulating document drafts, and developing policy changes where needed. Our proposal is based on our knowledge of the Town, and in particular our previous Housing Element work. Our "ramp up" for the Housing Element Update will be relatively short as a result, enabling us to dive into the Update quickly and efficiently.

We will prepare a comprehensive list of required information, including the Town's annual HCD reports, fee schedules, building permit history, and other information, so that Town staff have one centralized list of needed materials. To the greatest extent possible, we will rely on Town website information, Census and other agency demographics, and HCD website information to gather data. We will also coordinate review of existing policies and programs with Town staff. This review will be used for both the evaluation of the Element's effectiveness from 2013 to 2021, and to determine which policies and programs should be maintained, amended or removed from the 6th Cycle Update. We would anticipate that Town staff will need to dedicate up to 40 hours of time to information gathering, review of existing element components and review of the draft Housing Element over the life of the project.

Project Schedule

The project schedule is provided below. It is generally consistent with the schedule outlined in the RFP, but allows for an earlier completion of the Element draft, to assure sufficient time for HCD review and changes.



Town of Apple Valley Housing Element Update Project Schedule													
Task	9/20	10/20	11/20	12/20	1/21	2/21	3/21	4/21	5/21	6/21	7/21	8/21	9/21
Meetings & Consultations	█	█			█			█			█		
Community Workshops (2)			█		█								
Research & Data Collection	█	█	█										
Element Drafting		█	█	█	█								
Town Review of Draft Element					█								
HCD Review 1st Draft (60 days)						█	█						
Amend Element per HCD Comments								█					
HCD Review 2nd Draft (60 days)									█	█			
Prepare & Circulate Initial Study (20 days)									█	█			
Prepare CEQA Notices & Tribal Consultation						Tribal Con.		█	NOI				NOD
Planning Commission Hearing										█			
Town Council Hearings (2)											█	█	
Prepare Final Documents												█	
Final Document Review by HCD/Certification													9/21-10/21



III. STATEMENT OF QUALIFICATIONS

A. Terra Nova

Terra Nova has been providing planning and environmental services to a wide range of public agencies, including all cities of the Coachella Valley, the County of Riverside, the Towns of Apple Valley and Yucca Valley, the City of San Bernardino, and other agencies since 1984. During that time, we have prepared General Plans and Housing Elements and Updates for multiple jurisdictions, starting in 1987, when we prepared the City of Rancho Mirage's Housing Element for the 2nd Cycle. Since that time, we have completed a varying number of Elements for the 3rd, 4th and 5th Cycle updates.

The following section provides brief resumes of Terra Nova key personnel. All personnel listed will be fully involved in the project, and have availability to perform the scope of work detailed in this proposal. Nicole Sauviat Criste will manage the project, coordinate all staff activities, and be the primary contact for the Town and HCD.

B. Staff Qualifications

Nicole Sauviat Criste **Principal & Project Manager**

Ms. Criste has led Terra Nova's Housing Element efforts since the firm's inception. Her experience with Housing Elements has included Apple Valley (4th and 5th Cycles), Palm Desert (3rd, 4th and 5th Cycles), Rancho Mirage (2nd, 3rd, 4th and 5th Cycles), Cathedral City (3rd and 4th Cycles), Palm Springs (4th and 5th Cycles), Blythe (2nd, 3rd and 4th Cycles), and Yucca Valley (2nd, 3rd and 4th Cycles). For the 3rd Cycle (1998-2006), Ms. Criste completed and received certification from HCD for five Housing Elements. In the 4th Cycle (2006-2013), Ms. Criste completed and received certification from HCD for seven Housing Elements, and for the 5th Cycle (2013-2021), she completed and certified five Elements.

Ms. Criste was also the Principal in charge of the Town's General Plan and EIR, both La Quinta General Plan updates in 2002 and 2009, and the Banning General Plan.

Since 1981, Ms. Criste has conducted extensive land use analysis, development design, market research analysis and marketing strategy development. Her land use/market feasibility experience has included the analysis and application of demographic research to determine real estate and development trends, focused marketing campaigns, and to gauge project feasibility.



With Terra Nova since 1985, Ms. Criste has researched and assisted in the preparation of environmental documents for all the cities of the Coachella Valley, the U.S. Bureau of Indian Affairs, Federal Highway Administration, Farmer's Home Administration and the Economic Development Administration.

Ms. Criste also works extensively in current planning, assisting the cities of La Quinta, Palm Springs, Rancho Mirage, Banning, San Bernardino, and Yucca Valley in the processing of applications ranging from Specific Plans to Use Permits. Her experience in this area ranges from the staffing of planning department to individual case work and preparation of Initial Studies and Mitigation Monitoring Programs.

Ms. Criste is a graduate of Scripps College with a Bachelor of Arts degree in European Studies.

Andrea Randall
Senior Planner

Ms. Randall has been a professional planner since 1993 and has been with Terra Nova since 1998. She has worked on a variety of General Plan and Specific Plan projects, and has prepared and managed numerous CEQA and NEPA analyses. Her most recent experience with Housing Element Updates included both Palm Desert and Apple Valley during the 4th and 5th Cycles.

She has an in-depth knowledge of the diverse socio-economic landscape of the Coachella Valley, has prepared several analytical models of its communities, and is principal author of the Cathedral City General Plan's environmental justice and demographics analyses. She also completed fiscal impact analysis models for Palm Desert when the City last considered annexation of its Sphere of Influence.

Ms. Randall played an important role in a 10,000-acre annexation and associated analysis on lands near the Colorado River, and has assisted in securing state and federal incidental take permits for major developments in the Coachella Valley.

Ms. Randall has also conducted predevelopment planning analysis for a variety of projects, including the COD West Valley Campus, Paradise Valley Market Feasibility Study and Fiscal Impact Analysis, the Coachella Valley Multiple Species Habitat Conservation Plan Fiscal Impact Analysis, and analyses for a number of annexations and residential subdivisions.

Ms. Randall graduated Magna Cum Laude with a Bachelor's degree in Urban Affairs and Planning from the Virginia Polytechnic Institute and State University.



Kelly Clark
Associate Planner

Ms. Clark joined Terra Nova in 2011. Since that time she has provided research and analysis required for CEQA and NEPA documents, local green building policies and various development projects throughout the Coachella Valley, including Initial Studies for projects in Desert Hot Springs, Palm Desert, San Bernardino and Twenty-nine Palms. She also contributed to the preparation of the College of the Desert Palm Springs and Indio Educational Center EIRs. Ms. Clark provided demographic and research support for the five Housing Elements completed by Terra Nova in the 5th Cycle.

She has developed a strong technical understanding of air quality and greenhouse gas modeling, and prepares air quality models, including most of the air quality and GHG analyses for more than 50 Initial Studies, Mitigated Negative Declarations, EIRs and NEPA documents. She has recently completed or is currently the project manager for a variety of projects, including the CEQA EIR and permitting for the Coachella Valley Stormwater Improvement project, and the DSRT SURF Specific Plan.

Ms. Clark authored significant portions of the Coachella Valley Water District's Chromium-6 Compliance Project EIR. She was a part of the planning team for the Rancho Cucamonga Foothill Boulevard BRT corridor study, a SCAG Compass Blueprint Demonstration Project. She has also prepared more than a dozen Water Supply Assessments in the counties of Riverside, Kern, San Bernardino and Los Angeles.

She is a graduate of the University of California, Berkeley, receiving a Bachelor of Science degree in Conservation and Resource Studies. Ms. Clark is a member of the American Planning Association.

Bifan Chen
Assistant Planner

Ms. Chen joined Terra Nova in 2019 and since that time she has contributed to a variety of planning and analysis projects, including the Betty Ford Center Expansion EIR, Rancho Mirage Highway 111 Specific Plan, Citrus Plaza Specific Plan and a variety of CEQA Initial Studies and EIRs. Before joining Terra Nova, Ms. Chen was a Building Energy Associate in the San Francisco Department of Environment, and before that an intern at the National Center for Ecological Analysis and Synthesis in Santa Barbara.

Ms. Chen has quickly demonstrated her strong planning and analytical skills, as well as exceptional writing and communication skills. She has a well-grounded technical understanding of environmental sciences and has made significant contributions to



Specific Plans and other planning documents, Initial Studies, Mitigated Negative Declarations and EIRs. She will be responsible for research tasks associated with the Housing Element Update.

Ms. Chen is a graduate of the Chinese University of Hong Kong with a Bachelor of Science degree in Environmental Science. She also holds a Master of Environmental Science and Management from the Bren School of Environmental Science & Management, University of California, Santa Barbara.



IV. SCOPE OF WORK

The Town's Housing Element is currently certified. The Town's draft final Regional Housing Need Allocation (RHNA) is 4,281¹. The Town's current Housing Element identified more than 12,000 units of capacity. The inventory will need to be checked to assure that all services are available at all properties. This is a new component of Housing Element law, and must be demonstrated to HCD's satisfaction. Although some of the inventory sites may be eliminated because of this requirement, we anticipate that sufficient land can be identified to accommodate the 6th Cycle RHNA.

The analysis needed in the 6th Cycle Update will focus on performance during the 5th Cycle, and creative strategies to demonstrate facilitation of housing in the 6th Cycle to support the required RHNA. In addition, the Element will need to be comprehensively reviewed and revised to address two major items:

1. Changes in demographics since the last Update.
2. Changes in State law stemming from the State's current focus on the housing crisis, including additions required of Housing Elements.

The Housing Element Update is governed by the requirements of State law, and has been further constrained by the State's 2018 and 2019 legislative sessions, which added requirements to Housing Elements that further define the Town's facilitation of the development of housing for all income levels. Policies and programs will need to be reviewed, amended and supplemented to address these issues. We would not, however, anticipate significant changes in the policy direction of the document, beyond the updates necessary to conform to the General Plan.

CEQA Review

We propose an Initial Study for this project, likely leading to a Negative Declaration or Mitigated Negative Declaration. Although the Housing Element will be amended, the amendments are not expected to result in significant increases in environmental impacts, beyond those identified in the General Plan EIR. Changes to accommodate the land inventory are not expected to be substantial, given the Town's current inventory.

A. Project Tasks

The following Scope of Work corresponds to the schedule provided in Section II above.

- Meetings & Consultation: Terra Nova will prepare for and attend one Kick Off meeting and five (5) meetings with staff during the preparation of the Housing

¹ SCAG, February 27, 2020.



Element Update. In addition, Terra Nova staff will confer with Town staff on project status, SCAG adoption of the RHNA and other project-related issues as needed.

- Community Workshops: In coordination with Town Staff, prepare for, coordinate and staff two (2) community workshops and document the input received from all parties. The format and location of the workshops will be determined in coordination with Town staff following initiation of the project, but should be scheduled for the end of 2020 and beginning of 2021.
- Research and Data Collection:
 - Review the Town's General Plan, Zoning Ordinance and approved projects and develop clear understanding of the land use context for the Housing Element. This review will include checking existing Zoning standards and requirements which may have been affected by recent State legislation, including accessory dwelling units and junior accessory units, standards and definitions for reasonable accommodation, single room occupancy, transitional and supportive housing, etc.
 - Review existing policies and programs of the Housing Element, and develop analysis of progress made in addressing each of them. Identify policies and programs that require carry-over into the Update, eliminate those that have been completed, and determine new programs that may be necessary for the 2021-2029 planning period.
 - Update demographic section to include current (2019 and 2020, as available) information, such as US Census annual Community Surveys, SCAG, California Department of Finance, current housing stock and values, etc.
 - Work with staff to determine what sites will be needed in the vacant lands inventory to meet the Town's RHNA. Sufficient sites are expected to be available for above moderate income households, and potentially for moderate income households in the Town's lower density designations. For very low and low income households, high density and mixed use lands will be reviewed for the provision of utilities. As required by the State's 2018 Housing Package (AB 1397), the inventory will include assessor's parcel numbers, demonstrate that the sites are serviced by utilities and infrastructure, and include an analysis of realistic density.
 - Expand constraints analysis as required by AB 879, including review of Municipal Code requirements that may impact the cost of housing, non-governmental constraints related to reduced density proposals, etc. Assure that programs are included in the revised Element, if necessary, to remove all constraints.



- Housing Element Drafting: Incorporate research and documentation from previous task into revised Element document. Develop new and amend existing goals, policies and programs to reflect the research and documentation described above. Also draft any amendments to other elements of the General Plan if needed to assure internal consistency. Terra Nova will provide Town staff with a first draft document for review and comment, and amend the document as needed to address Town staff concerns. A final draft will be prepared for submittal to HCD.
- State Review and Revision: Submit the draft Housing Element document for HCD review, coordinate response to comments from HCD with Town staff, and draft modifications to Update as necessary. For purposes of this proposal, we have assumed two (2) reviews by HCD, not including the certification review. Following adoption by the Town Council, Terra Nova will submit the document for certification by HCD, and coordinate the process on behalf of the Town.
- CEQA Review: Prepare CEQA Initial Study and Checklist and public notice documentation. We propose an Initial Study likely leading to a Negative Declaration or Mitigated Negative Declaration. No technical studies are anticipated for this Initial Study.
- Notices and Tribal Consultation: Prepare NOI, NOD, and other CEQA notices as needed. Terra Nova will transmit notices to the County, and provide notices to the Town for posting at Town Hall and publication in the newspaper. Terra Nova will also prepare the required letters to Tribal representatives, and transmit those letters on the Town's behalf. Should a Tribe request consultation, Terra Nova will coordinate a meeting at Town Hall with Town staff, and can attend that meeting at Town's discretion.
- Public Hearings: Assist staff in the preparation of staff reports, resolutions, and other presentation materials, and attend up to three (3) public hearings (1 Planning Commission and 2 Town Council).
- HCD Certification: Terra Nova will submit the adopted Housing Element to HCD and track its final review and certification.
- Final Documents: Terra Nova will provide the adopted and certified Housing Element Update to the Town. Documents will be provided in Word and PDF formats for the Town's use.



IV. FEE PROPOSAL

The following project budget has been developed based on the tasks outlined in Section III. Terra Nova's fee schedule is also provided below.

**Town of Apple Valley
Housing Element Update
Project Budget**

Task	Staff Member Subtotal	Task Total
City Team Meetings, Internal Meetings, etc. (24 hrs @ \$195./Hr.) (4 hrs @ \$140./Hr.)	\$4,680.00 \$560.00	\$5,240.00
Public Outreach - 2 Workshops (12 hours @ \$195./Hr.)	\$2,340.00	\$2,340.00
Review of City Documents & Existing Element (20 hrs @ \$160./Hr.) (40 hrs @ \$115./Hr.)	\$3,200.00 \$4,600.00	\$7,800.00
Update Housing Element (48 hrs @ \$195./Hr.) (40 hours @ \$160./Hr.) (50 hrs @ \$140./Hr.) (40 hrs @ \$115./Hr.)	\$9,360.00 \$6,400.00 \$7,000.00 \$4,600.00	\$27,360.00
HCD Reviews and Amendments (2 reviews) (24 hrs @ \$195./Hr.)	\$4,680.00	\$4,680.00
CEQA Initial Study, SB 18 Consultation, NOI, NOD (8 hours @ \$160./Hr.) (36 hrs @ \$115./Hr.)	\$1,280.00 \$4,140.00	\$5,420.00
Project Management, Staff Report Support (30 hrs @ \$195./Hr.)	\$5,850.00	\$5,850.00
Preparation and Attendance at Public Hearings (3) (14 hrs @ \$195./Hr.)	\$2,730.00	\$2,730.00
Administrative Support (30 hrs @ \$45./Hr.)	\$1,350.00	\$1,350.00
Miscellaneous Office Expenses: copies, postage, etc.	\$750.00	\$750.00
Total Housing Element Update Costs		\$63,520.00



Terra Nova Fee Schedule

Terra Nova invoices its clients on a cost-basis using an hourly billing system. Reimbursable expenses are charged on a cost basis. The current fee schedule is provided below:

Terra Nova Staff	Hourly Rate
Principal Planner	\$ 195.00
Senior Planner	\$ 160.00
Associate Planner	\$ 140.00
Assistant Planner	\$ 115.00
Graphic Design Specialist	\$ 65.00
Administrative Assistant	\$ 45.00
REIMBURSABLES	
Photo Copies	
(8.5" X 11" BW)	\$ 0.15 ea.
(8.5" X 11" Color)	\$ 0.30 ea.
(11" X 17" BW)	\$ 0.30 ea.
(11" X 17" Color)	\$ 0.60 ea.
Large Format Plots	
BW	\$ 1.00/S.F.
Color	\$ 5.00/S.F.
Telephone Toll Charges	Cost
FAX Transmittals	Cost
Reproduction, Special photographic services, document printing, aerial photogrammetry, postage, etc.	Cost

**TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

**TERRA NOVA PLANNING & RESEARCH, INC. (HOUSING ELEMENT UPDATE 6TH CYCLE
(2021-2029)) SEPTEMBER 8, 2020.**

This Agreement is made and entered into this 8th day of September, 2020 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 Terra Nova Planning & Research, Inc. a corporation with its principal place of business at 42635 Melanie Place, Suite 101, Palm Desert, CA 92211 (“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 technical analysis of California housing regulations and policy formation for the update of the Housing Element of the General Plan for the 6th Cycle between 2021-2029, to public clients, is licensed in the State of California, and since it prepared the 4th and 5th Cycle Housing Elements for the Town and is very familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such services for the preparation of the 6th Cycle of the Housing Element Update of the General Plan for 2021-2029 as required by the State of California and referred to as (“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 and technical means necessary for the preparation of 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.

RVPUB\HSHANE\755092.1

3.1.2 Term. The term of this Agreement shall be from September 8, 2020 to December 31, 2021, 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, and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

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

3.2.5 Town's Representative. The Town hereby designates the Planning Manager, or 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 Nicole Sauviat Criste, 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.

3.2.10.3 Intentionally left blank.

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

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

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

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

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

3.2.10.5 Separation of Insureds: No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In

addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its directors, officials, officers, employees, agents, and volunteers.

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

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

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

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

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

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work,

data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed sixty-three thousand five hundred and twenty dollars (\$63,520.00) without written approval of the 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.

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

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

3.3.4 Extra Work. At any time during the term of this Agreement, Town may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Town to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from Town's Representative.

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

3.4 Termination of Agreement.

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

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

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

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

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

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

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by Town of the Documents & Data, including any method, process, product, or concept specified or depicted.

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

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Consultant:

Terra Nova Planning & Research, Inc.
Nicole Sauviat Criste, Principal
42635 Melanie Place, Suite 101
Palm Desert, CA 92211

Town:

Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
Daniel Alcayaga, Planning 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.

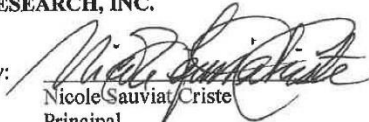
[SIGNATURES ON NEXT PAGE]

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

TOWN OF APPLE VALLEY

**TERRA NOVA PLANNING &
RESEARCH, INC.**

By: _____
Doug Robertson,
Town Manager

By: 
Nicole Sauviat-Criste
Principal

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

Thomas Rice, Town Attorney