



Town Council Agenda Report

Date: September 8, 2020 Item No. 10
To: Honorable Mayor and Town Council
Subject: PROFESSIONAL SERVICES AGREEMENT FOR THE COMPLETION
OF THE MULTI-SPECIES HABITAT CONSERVATION
PLAN/NATURAL COMMUNITIES CONSERVATION PLAN
From: Douglas Robertson, Town Manager
Submitted by: Lori Lamson, Assistant Town Manager
Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

Award the attached Professional Services Agreement for Solution Strategies, Inc. for \$120,000 to fund the completion of the Multi-Species Habitat Conservation Plan/Natural Communities Conservation Plan.

SUMMARY:

In 2007 Solution Strategies was hired by the Town to prepare the Town's Multi-Species Habitat Conservation Plan/Natural Communities Conservation Plan(MSHCP/NCCP). Multiple delays manifested by the State and Federal agencies have required additional costs, not anticipated at the start of the project. A grant awarded to the Town in 2012, subsidized some of the cost overages. However, with the end in sight, additional funds are needed to get us closer to finishing the plan. A draft plan is scheduled for public review in the beginning of 2021.

FISCAL IMPACT:

This contract amount was included in the 20/21 fiscal year budget approved by the Town Council.

Attachments:

Professional Services Contract for Solution Strategies 7-1-20

CONTRACT FOR SERVICES

This AGREEMENT made July 1, 2020

CLIENT: Town of Apple Valley, having a principal place of business at:
14955 Dale Evans Parkway, Apple Valley, CA 92307

CONTRACTOR: **Solution Strategies International** having a principal place of business at
20129 Hwy 18
Apple Valley, CA 92307

ARTICLE 1. TERM OF CONTRACT

Section 1.01. This agreement will become effective on July 1, 2020 and will continue in effect through December 31, 2021 unless terminated in accordance with the provisions of Article 7 of this agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

Section 2.01. It is the express intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venture, or partner Client. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of the employer and the employee between Client and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes or any other purpose. Contractor shall retain the right to perform services for others during the term of this agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

Specific services: Section 3.01. Contractor agrees to provide service in: Professional Environmental Planning including the completion and publishing of the public draft Multi-Species Habitat Conservation Plan/Natural Communities Conservation Plan document and the accompanying EIR/EIS document.

Method of Performing Services: Section 3.02. Contractor will determine the method, details and means of performing the above-described services within the directions given by the client. Client shall have no right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.

Employment of Assistants: Section 3.03. Contractor may, at the Contractor's own expense; employ such assistants as Contractor deems necessary to perform the services required of Contractor by this agreement. Other than where mandated by law, Client may not control, direct, or supervise Contractor's assistant or employees in the performance of those services. Contractor assumes full and sole responsibility for payment of all compensation and expenses of these assistants for all state and federal income tax, Workers' Compensation unemployment insurance, Social Security, disability insurance, and other applicable withholdings.

Place of Work: Section 3.04. Contractor shall perform the services required by this agreement at any place or location and at such time as Contractor shall determine; provide that work performed on Client property must be performed with minimum disruption to Client operations.

ARTICLE 4. COMPENSATION

Compensation: Section 4.01. In consideration for the services to be performed by Contractor, Client agrees to pay Contractor up to a total amount of compensation not exceed one hundred and twenty thousand dollars (\$120,000.00). Payment requested for work not within the scope of this contract will not be honored or paid unless such extra work and payment is authorized in writing by the Town Manager. The Town reserves the right to direct any changes in the order of performance of any of the task requirements referenced or set forth in the order of performance of any of the task requirements and where deemed to be in the best interests of the Town.

Date for Payment of Compensation: Section 4.02. Contractor shall be paid for services rendered hereunder no later than the last day of each month for work completed within the previous 30 days.

Expenses: Section 4.03. Contractor shall be responsible for all costs and expenses incident to the performance of services for Client, including, but not limited to, all costs of equipment provided by Contractor; all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor; and all other of Contractor's costs of doing business. Client shall be responsible for no expenses incurred by Contractor in performing services from Client.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

Tools and Instrumentalities: Section 5.01. Contractor will supply all tools and instrumentalities required to perform the services under this agreement. Contractor is not required to purchase or rent any tools, equipment, or services from Client.

Workers' Compensation: Section 5.02. Contractor agrees to provide worker's compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify Client and any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents. If applicable, please attach Worker's Compensation certificate.

Indemnification of Liability: Section 5.03. Contractor shall indemnify and hold Client harmless against any and all liability imposed or claimed, including attorneys' fees and other legal expenses, arising directly from any act or failure of Contractor or Contractor's assistants, employees, or agents, including all claims relating to the injury or death of any person or damage to any property.

Assignment: Section 5.04. Neither this agreement nor any duties or obligations under this agreement may be assigned by Contractor without the prior written consent of Client.

State and Federal Taxes: Section 5.05. As Contractor is not Client's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- Client will not withhold FICA (Social Security) from Contractor's payments;

- Client will not make state or federal unemployment insurance contributions on behalf of Contractor;
- Client will not withhold state or federal income tax contributions on behalf of Contractor;
- Client will not make disability insurance contributions on behalf of Contractor;
- Client will not obtain workers' compensation insurance on behalf of Contractor.
- Client will send out IRS Form 1099 within 45 days of the beginning of the new year.

ARTICLE 6. OBLIGATIONS OF CLIENT

Cooperation of Client: Section 6.01. Client agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this agreement.

Assignment: Section 6.02. Neither this agreement nor any duties or obligations under this agreement may be assigned by Client without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF AGREEMENT

Termination on Occurrence of Stated Events: Section 7.01. This agreement shall terminate automatically on the occurrence of any of the following events:

- Bankruptcy or insolvency of Contractor;
- Sale of the business of the Contractor;
- Death of Contractor.

Termination by Client of Contractor: Section 7.02. The Client reserves the right to terminate this agreement effective immediately upon notification to the Contractor if Client, in Client's sole discretion, determines for any reason that immediate termination is in the best interests of Client.

Termination by Contractor of Client: Section 7.03. The Contractor reserves the right to terminate this agreement effective immediately upon notification to the Client if Contractor, in Contractor's sole discretion, determines for any reason that immediate termination is in the best interests of Contractor.

Termination for Failure to Make Agreed-Upon Payments: Section 7.04. Should Client fail to pay Contractor all or any part of the compensation set forth in Article 4 of this agreement on the date due, Contractor, at the Contractor's option, may terminate this agreement if the failure is not remedied by Client within thirty (30) days from the date payment is due.

ARTICLE 8. GENERAL PROVISIONS

Notices: Section 8.01. Any notice to be given hereunder by either party to the other may be effected by the personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the address appearing in the introductory paragraph of this agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

Entire Agreement of the Parties: Section 8.02. This agreement supercedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Client and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding. Any modification of this agreement will be effective only if it is in writing signed by the party to be charged.

Partial Invalidity: Section 8.03. If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Attorneys' Fees: Section 8.04. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

Governing Law: Section 8.05. This agreement will be governed by and construed in accordance with the laws of the State of California, executed on the date and year listed on the first page of the contract, in the Town of Apple Valley, California.

CONTRACTOR:

Linda Mitrovich
Printed Name


Signature

President
Title

(760) 946-9933
Telephone Number

CLIENT:

Lori Lamson
Printed Name

Signature

Assistant Town Manager
Title

Douglas B. Robertson
Printed Name

Signature

Town Manager
Title

1. On file
Business License Number or Taxpayers ID Number
2. N/A
Social Security Number
3. Copy of Worker's Compensation Certificate Attached On File Yes ___ Not Applicable
4. Copy of Liability Insurance Certificate Attached. On File Yes ___ Not Applicable