

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT FOR THE DESIGN SERVICES FOR THE TOWN HALL EXPANSION FACILITY.

Summary Statement:

This revised agreement addresses changes to the scope of work and related costs of amending the design services for the Town Hall Expansion Facility.

Dougherty and Dougherty Architects, LLP was awarded the original contract on July 10, 2007. This contract was for an amount not to exceed \$810,560 for the purpose of designing office space needed for the next 20 years, including a conference center for the Development Services for the Town. Development Services includes the four divisions of Economic and Community Development Department, Economic Development and Housing, Planning, Engineering and Building and the water and wastewater functions of the Public Services Department. This amendment to the contract is to add the design cost of a community meeting room, which includes 6,200 square feet of public meeting space, and for the redesign fees related to the revision of mechanical systems and elimination of the access floor system. These revisions modify the contract for an amount not to exceed \$966,230. The total additional amount consists of \$148,800, which was presented to the Council and unanimously supported at the October 14, 2008 Town Council meeting, and \$6,870, as submitted by Dougherty and Dougherty, for redesign fees due to elimination of the access floor.

(Continued on next page)

Recommended Action:

Award the amended professional services contract in the additional amount of \$155,670 to Dougherty and Dougherty Architects, LLP, for design services for the Town Hall Expansion Facility, to include 6,200 square feet of civic meeting space, and redesign fees related to elimination of the access floor system, subject to "Approval as to Form" by the Town Attorney and "Approval as to Content" by the Town Manager.

Proposed by: Planning Division

Item Number _____

Town Manager Approval: _____ **Budgeted Item** Yes No N/A

Town Council Meeting: December 9, 2008

Summary Statement (Continued):

DESIGN SERVICES FOR CIVIC MEETING ROOM SPACE—TOWN HALL EXPANSION

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At the October 14th meeting of the Town Council, the Town Manager addressed his concern about the lack of civic meeting space, which is a void in our community. Mr. Robinson indicated that the current public facilities program is the Town's best opportunity to fill this void until such time as formal conference center, convention center and community center facilities can be financed and built.

Originally in late 2007, when the design of the facility was in the early stages, a community room was considered by staff and the architect. The design and construction cost for public meeting space within the Town Hall Expansion Facility, at that time, proved to be too costly. Since that time, the economic downturn has steepened, resulting in a construction cost environment that will benefit the Town at this particular juncture. As a result, staff and the architect were able to work out a development proposal that would result in the design of public meeting room space that would be constructed at the same time as the Town Hall Expansion Facility. The original cost of the design proposal for the community room was \$285,000 and the proposed construction cost estimate was significantly higher than market forces would dictate. Staff and the Town's Construction Manager, Eberhardt Construction, worked diligently to resolve these discrepancies. This effort culminated in a design cost proposal of \$148,800.

In a continuing effort to reduce costs, staff eliminated the raised floor design feature and instructed the Architect to design a more traditional floor system. The cost associated with the redesign is \$6,870. The anticipated benefits are estimated to include a savings of \$400,000 - \$450,000.

Once completed, the public meeting room space plans and specifications will be included in the overall Town Hall Expansion Facility bid package as an additive/delete alternative. This will allow the Town Council to add or delete, as appropriate, the public meeting room space component based upon the responsible bids received. If, for economic reasons the project cannot proceed at the time of bid award, the Council and community can take comfort in the fact that shelf-ready plans are available for construction as soon as funds can be identified to proceed with this component of the Town Hall Expansion Facility project.

Based upon the foregoing, staff recommends adoption of the form motion.

Attachment:

Amended and Restated Professional Services Agreement

AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT

THIS AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 9th day of December, 2008, by and between THE TOWN OF APPLE VALLEY, a Municipal Corporation (hereinafter referred to as "TOWN") and DOUGHERTY + DOUGHERTY ARCHITECTS LLP, (hereinafter referred to as "CONSULTANT").

WHEREAS, pursuant to that certain Professional Services Agreement dated July 10, 2007, the Town retained Consultant for the purpose of the design of a new Town Hall Facility and 3,500 square foot office/maintenance building (the "Original Agreement") pursuant to a Request for Proposals/Request for Qualifications (RFP/RFQ) issued by Town; and

WHEREAS, the parties now desire to enter into this Agreement in order to provide for additional design services specifically related to the addition of a Community Room to the afore mentioned new Town Hall Facility, and revision of the Mechanical System and elimination of the Access Floor System; and

WHEREAS, it is the intent of the parties that the terms of this Agreement shall supersede and replace in their entirety the terms contained in the Original Agreement, and

WHEREAS, Consultant has represented to Town that Consultant has the knowledge, skills, resources and experience that qualify Consultant to provide said services for the Town, including related and accompanying studies, reports and all other matters described herein and any attachments hereto, including, but not limited to, the matters described in Request for Proposals/Request for Qualifications and Consultant's response to such RFP/RFQ (including but not limited to the Scope of Services and Schedule of Performance), contained in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, based upon the representations of Consultant, Town desires to retain the services of Consultant which shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks described herein in consideration for payment to Consultant of the fees herein described, contained in Exhibit B attached hereto and incorporated herein by this reference and in consideration of the further covenants, conditions and provisions hereinafter set forth: and,

NOW, THEREFORE, Town and Consultant mutually agree as follows:

1. The Town hereby retains Consultant to provide the services herein described, and Consultant hereby agrees to perform and be responsible for the performance of the professional services as set forth in the scope of services in Exhibit A, attached hereto.

2. Payment to Consultant by the Town of the fees described in Exhibit B for the work described in the scope of services shall be billed monthly for services and work completed. The Town will pay Consultant a fee not to exceed a maximum of nine-hundred, sixty-six thousand, two hundred, thirty dollars (\$966,230) for the services described in the attached exhibits. Payment requested for work not within the scope of this Agreement will not be honored or paid unless such extra work and payment is authorized in writing by the Director of Economic and Community Development (hereinafter referred to as "Director"), subject to the provisions of Paragraph 6, hereof. Increases or decreases in task requirements, changes in product format or detail, or new task requirements shall be approved in advance in writing by the Director. The Town, through the Director, reserves the right to direct any changes in the order of performance of any of the task requirements referenced or set forth in the proposal and/or Scope of Services; and where deemed to be in the best interests of the Town, the Director may direct termination of the performance of any task, or any portion thereof; in the event of such termination, Consultant shall be paid only for the work performed prior to the effective date of said termination. The provision in this paragraph shall not be construed to authorize the Director to approve payments for extra work which result in exceeding the total sum authorized by this contract without the prior approval of the Town Council.

3. Consultant shall invoice the Town monthly in accordance with a work and payment schedule, approved in advance by the Director. Said invoices shall include the work performed by task, rate, and a task progress status report in a form and with such additional information satisfactory to said Director. Payments to consultant for approved work and accepted submitted products shall not be unreasonably withheld and under no circumstance shall be delayed for work performed beyond 60 days from receipt of invoices without prior notification to Consultant of the reasons for withheld payments.

4. The Town has an interest in the qualifications of and capabilities of the person and entities who will fulfill the duties and obligations imposed upon Consultant by this Agreement. No assignment of this Agreement or of any rights hereunder, and no delegation of any performance or obligation of performance hereunder shall be made, either in whole or in part, by Consultant without the prior written consent of the Town. Consultant has or will provide all personnel required to perform services under this Agreement. All subcontractors or sub-consultants to be secured by Consultant must have the prior written approval of the Town through the Director. All of the services will be performed by Consultant, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized and permitted under State and local laws to perform such services, and shall be subject to the written acceptance of the Director.

5. Upon completion of each phase of work, Consultant shall submit to the Town a status report on the services performed thus far. Consultant will also timely provide any "deliverables" completed during that phase.

6. Town may request Consultant to perform additional services not contemplated by the Scope of Services. Prior to the commencement of such additional services, the exact nature of such services and the cost to the Town thereof shall be set forth in a written agreement signed by the parties hereto.

7. Consultant shall complete the Scope of Services so as to allow for completion of the entire project. Consultant acknowledges, and the parties specifically agree that time is of the essence in the performance of the services required to be performed under this Agreement. Consultant will complete the task requirements to meet the schedule, which shall be provided thirty (30) days from the Effective Date of the Agreement signed by all parties. The schedule, when completed, will become part of this agreement and will be identified as Exhibit D, attached hereto, subject to such schedule alterations by the Director as are permitted herein.

8. At the completion or termination of this Agreement, all data, studies, and any other information, work products, memoranda, documents or writings, created or generated in connection with the performance of this Agreement belong to and shall be delivered to the Town for its keeping, by delivery of same to the Director. Consultant may retain copies of these materials for its use or purposes.

9. Consultant will perform the services set out in this Agreement, or will cause performance of said services to occur as contemplated herein in accordance with the generally accepted standards for performing similar professional services within the State. Town has relied on Consultant's representations for quality and professional work as an inducement to enter into this Agreement.

10. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, Town shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

If the Town Manager or his designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, the Town Manager shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the Town shall have the right, notwithstanding any other provision of this Agreement to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

11. The failure of the Town to insist upon the strict performance of any of the provisions of this Agreement, or failure to exercise any other right, option or remedy hereby reserved or as permitted by law, shall not be construed as a waiver for the future of any such provisions, right, option, or remedy, or as a waiver of any subsequent breach thereof.

12. The Town may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Town suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

In the event this Agreement is terminated pursuant to this Section, the Town shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the Town. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the Town.

13. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Town that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of Town or its designees at reasonable times to such books and records; shall give Town the right to examine and audit said books and records; shall permit Town to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

14. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the Town and may be used, reused, or otherwise disposed of by the Town without the permission of the Consultant. With respect to computer files, Consultant shall make available to the Town, at the Consultant's office and upon reasonable written request by the Town, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

15. Consultant is and shall at all times remain as to the Town a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither Town nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Town. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against Town, or bind Town in any manner.

16. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Town shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Town. Town shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

17. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

Town Manager
Attn: Assistant Town Manager, Economic and Community Development
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Notice to Consultant shall be sufficient if sent to:

Dougherty + Dougherty Architects LLP
Betsey Olenick Dougherty, Partner in Charge
3194D Airport Loop
Costa Mesa, CA 92626

Each party hereto may change the address at which it receives written notice by so notifying the other party in writing.

18. The Director, or representative, shall represent the Town in all matters pertaining to the administration of this Agreement, including without limitation, attending all necessary meetings and conferences, and review and approval of all products submitted by Consultant, but not including the authority to enlarge the scope of work or

increase the compensation due Consultant; although Consultant shall be responsible for coordination of all necessary meetings and conferences, and will coordinate all public information and participation activities.

19. No information, including photographs, public announcements or confirmation of same, or any part of the subject matter of this Agreement or any phase of any program hereunder shall be made public without prior approval of the Director.

20. It is agreed and understood that Consultant will not be engaged in private work projects in the project work area while Consultant is employed by the Town. The "project work area" for purposes of this paragraph includes the area of the proposed project and the surrounding vicinity which may be significantly impacted by the proposed work hereunder. In any event, Consultant shall not engage in any private work which would constitute a conflict of interest with respect to the services performed under this Agreement.

21. Consultant shall defend (with attorneys approved by Town), hold harmless and indemnify the Town, its officers, employees and agents against liability (whether bodily injury, including death, and/or property damage and/or any other losses, claims, damages, actions or judgments) including attorney's fees and costs arising or alleged to arise out of the wrongful, negligent, reckless acts, omission of or willful misconduct of Consultant or its officers, agents, employees, subcontractors or representatives in the performance of the services set forth in the attached exhibits or this Agreement. 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 officers, employees and agents.

22. As a condition precedent to the effectiveness of this Agreement, and in partial performance of Consultant's obligations hereunder, Consultant, at its expense, shall deliver to Town for approval, certificates or policies of insurance as required in Exhibit C, attached hereto.

The Town shall also be named as an additional insured under said policy or policies of liability insurance, which insurance shall be primary and not contributing with any other liability insurance available to the Town. Consultant and its insurance carrier shall be required to inform the Town in writing of any change, expiration, cancellation or renewal of any insurance policy or policies within 30 days prior to the effective date thereof, and where applicable, an appropriate rider or addition shall be made to said policy relating thereto acceptable to the Town; and if any insurance required herein is cancelled or reduced in coverage, Consultant shall promptly provide replacement coverage acceptable to the Town.

23. Should any section or any part of this Agreement be rendered void, invalid or unenforceable by any court of law, any such final determination shall not render void, invalid or unenforceable any other sections or portions of this Agreement unless the

Town determines in writing that its purpose cannot be accomplished by the remaining provisions not so invalidated.

24. This Agreement has been made and entered into in the State of California, and the laws of the State of California shall govern the validity and interpretation hereof and the performance hereunder.

25. This Agreement contains the entire understanding of the parties, and there are no further or other Agreements or understandings, written or oral, in effect between the parties hereto relating to the subject matter hereof, and any prior understanding or Agreement of the parties shall not be binding unless set forth herein, and, except to the extent expressly provided for herein, no amendments of this Agreement may be made without the written agreement signed by both parties hereto.

26. Should litigation or arbitration occur between the parties hereto relating to the provisions of this Agreement, all reasonable litigation or arbitration expenses and costs, including reasonable attorney's fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

27. Consultant represents that it has all personnel required in performing the services under this Agreement. All such personnel shall be fully qualified, and, where applicable, shall be licensed or otherwise authorized under State and local law to perform such services. The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to the Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The Town and its officers and employees, shall not be liable at law or equity occasioned by failure of the Consultant to comply with this Section.

28. Consultant shall not be liable for delays in the performance of this Agreement caused solely by acts of God or similar events beyond the control of Consultant, unless said events could have been foreseen or said delay or any portion thereof could have been avoided.

29. Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Consultant shall take appropriate action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant shall comply with all applicable Federal laws and Executive Orders and relevant orders of the Secretary of Labor, with all State and local laws and affirmative action compliance programs and other applicable rules and regulations of all government and administrative agencies relating to any and all performance under this Agreement.

30. Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the Town in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Town will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the Town to any and all remedies at law or in equity.

31. No member, officer, or employee of Town, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

32. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Town's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the Town Manager or unless requested by the Town Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the Town. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives Town notice of such court order or subpoena.

33. Consultant shall promptly notify Town should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Town. Town retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with Town and to provide the opportunity to review any response to discovery requests provided by Consultant. However, Town's right to review any such response does not imply or mean the right by Town to control, direct, or rewrite said response.

34. The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the Town. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Dougherty + Dougherty, Architects LLP shall perform the services described in this Agreement.

Dougherty + Dougherty, Architects LLP may use assistants, under its direct supervision, to perform some of the services under this Agreement. Consultant shall provide Town fourteen (14) days' notice prior to the departure of any employee subcontractor from Consultant's employ assigned to this agreement as of its Effective Date. Should he/she leave Consultant's employ, the Town shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Town and the Consultant.

35. This Agreement binds Consultant, and its successors and assigns, although this paragraph shall not be construed as permitting any assignment, subletting or transfer of any interest, rights or obligations of Consultant under this Agreement without the prior written consent of the Town. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

36. Town and Consultant agree that time is of the essence in this Agreement. Town and Consultant further agree that Consultant's failure to perform on or at the times set forth in this Agreement will damage and injure Town, but the extent of such damage and injury is difficult or speculative to ascertain. Consequently, Town and Consultant agree that any failure to perform by Consultant at or within the times set forth herein shall result in liquidated damages of three-hundred dollars (\$300) per day for each and every day such performance is late. Town and Consultant agree that such sum is reasonable and fair. A performance schedule will be provided to Town thirty (30) days from the Effective Date of the Agreement signed by all parties. Once agreed upon by all parties the performance schedule will become part of this Agreement. The schedule will be reviewed by all parties on a regular basis for update and approval. The liquidated damages will be tied to the regular review and updated schedule. Furthermore, Town and Consultant agree that this Agreement is subject to Government Code Section 53069.85 and that each party hereto is familiar with and understands the obligations of said Section of the Government Code.

37. Ownership of Materials.

a. 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.

b. Subconsultants. Consultant shall require any 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.

c. 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 the project described herein 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.

38. The recitals set forth above are true and correct and are incorporated into this Agreement by reference as though fully set forth herein.

39. The terms contained in this Agreement supercede and replace in their entirety the terms contained in the Original Agreement, The parties agree that the terms contained herein are effective and binding upon the parties as of July 10, 2007, the date of the Original Agreement.

40. The person or persons executing the Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement at Apple Valley, California, effective the day and year first above written.

TOWN OF APPLE VALLEY, CALIFORNIA

BY: _____
Mayor

ATTEST:

Mrs. La Vonda M. Pearson Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Mr. John Brown, Town Attorney

Mr. Frank Robinson, Town Manager

CONSULTANT
Dougherty + Dougherty Architects, LLP

Betsey Olenick Dougherty
Partner in Charge

Town of Apple Valley

Town Hall Facility

Exhibit A

Amended and Restated Professional Services
Agreement Dated December 9, 2008

DOUGHERTY • DOUGHERTY ARCHITECTS LLP

B.

Methodology

The following itemization details our basic services and methodology proposed for the Town Hall New Facility for Expansion, *including the additional design services for a Community Room, and revision of mechanical system and elimination of the access floor system*, for the Town of Apple Valley. It will be extremely important to engage a project committee, consisting of empowered representatives of each constituency. Opportunities for input will encourage an inclusionary process of Town personnel and vested interest representatives. Partners Betsey Olenick Dougherty and Brian Paul Dougherty contribute extensive experience in the facilitation of meeting and forums, and will be actively involved in this process

Our proposed approach is as follows:

Pre-Design Coordination and Program Analysis

Staff Assigned:

Architect Principal

Architect Project Manager

The initial step in the design process for the new Town Hall Expansion will be to meet with the appropriate Town of Apple Valley representatives for the purpose of:

- Developing the scope of the program;
- Understanding the expectations and anticipated outcome;
- Developing a clear definition of the program, design criteria, program objectives and making subsequent recommendations;
- Refining a detailed project schedule, including the identification of critical dates and their relationship to design approvals and funding;
- Discussing budget limitations;
- Visiting the site, obtaining and reviewing all documentation of existing conditions with assistance from consulting engineers; and
- Evaluating the relationship of the new design to the adjacent facilities.

We believe the key to success is effective and thorough communication between the Town of Apple Valley and all members of the design team to identify issues and to enhance program development, thus allowing the necessary services to proceed effectively and responsively.

This pre-design/programming phase occurs at the beginning of schematic design and includes intensive coordination/interface and progressive regular meetings with Town of Apple Valley representatives. Initially, the meetings establish the guidelines and specific criteria to direct the team's efforts. Thereafter, these meetings provide a continuum to receive information, clarify input, inform project committee members of progress and direction, and allow the Town the opportunity for review and comment. The hours associated with this work are reflected within the Schematic Design fee.

Town of Apple Valley Provided Services

The Town of Apple Valley shall designate representatives, authorized to act in the Town's behalf with respect to the project. A representative committee will be empowered to make decisions on behalf of their respective constituent group. The Town shall also furnish the A/E team with all necessary reference data, which includes, but is not limited to the following:

- Site surveys including the location of all existing improvements, utilities and site features;
- Geotechnical Reports;
- Funding limitations; and,
- Overall schedule goals with critical dates.

The Town of Apple Valley shall be responsible for the review of all documents submitted and render decisions pertaining there to in a reasonably prompt manner, so as to avoid unreasonable delay in the orderly progress of services in order to meet schedule goals. These goals will establish a framework to develop an overall project schedule.



Schematic Design Phase

Staff Assigned:

Architect Principal
Architect Project Manager
Architectural Designer
Architectural Technical Support Staff
Consulting Engineers

Following initial meetings with committee members, we will discuss a design strategy and respond with optional conceptual plans for discussion. A series of meetings will follow in a collaborative effort to develop responsive designs. Graphic studies will depict alternative proposed design solutions that consider:

- Response of the new design to the existing Town Hall and surrounding community;
- Establishment of priorities in scope to wisely distribute expenditures;
- Examination of program space adjacencies;
- Creation of an imaginative program response;
- Provision of maximum utilization and support for users;
- Analysis of visibility, supervisory, security and life safety issues;
- Analysis of access compliance issues;
- Analysis of mechanical, electrical, technology and plumbing building systems;
- Compatibility with long-term use, maintenance procedures and schedules for utilization;
- Development of digital renderings and plans;
- Creation of a conceptual cost estimate; and,
- Creation of public media for use by the Town of Apple Valley in communicating the schematic design to the broader community.

These plans will be presented and reviewed at proposed Town of Apple Valley committee, commission and Council meetings to gather responses and make subsequent revisions. Reconciliation of the program and budget will be considered at this time. The final plans will serve as a basis for future design development. The initial LEED "Scorecard" will be submitted at the conclusion of this phase if the Town determines this is of benefit to the project.

Development Design Phase

Staff Assigned:

Architect Principal	Civil Engineer and Staff
Architect Project Manager	Structural Engineer and Staff
Architect Job Captain	Mechanical/Plumbing Engineer and Staff
Architectural Designer	Electrical Engineer and Staff
Architectural Technical Support Staff	Landscape Architect and Staff
Cost Estimator	

This stage involves delineating the conceptual design into a refined vision, reflecting input from the project committee. Cost implications will be discussed in depth at this time. The architectural solution will illustrate:

- Inherent flexibility in new design and in infrastructure;
- Adjacencies and interior/exterior circulation patterns;
- Solutions to life safety issues;
- The aesthetic supportive articulation of space in response to Town Hall context;
- Potential fixture, furniture and equipment layouts;
- Long-term maintenance, durability and energy efficient design techniques;
- Visual and physical safety and security measures;
- Compliance with Title 24, ADA, and all regulatory requirements; and,
- Development of engineered building systems.

The design development documents will clearly delineate the design solution in three dimensions. They will be presented, along with a statement of probable construction costs, to the Town of Apple Valley representatives for final approval prior to the detailed development of construction documents.



Construction Documents Phase

Staff Assigned:

Architect Principal	Civil Engineer and Staff
Architect Project Manager	Structural Engineer and Staff
Architectural Job Captain	Mechanical/Plumbing Engineer and Staff
Architectural Technical Support Staff	Electrical Engineer and Staff
Cost Estimator	Landscape Architect and Staff

The construction document phase is a time of intense production on the part of the architectural, landscape architectural, and consulting engineering team. The scope of work is as follows:

- Integration and coordination of all engineered building systems;
- Meeting all code and regulatory requirements;
- Interim submittals for City review as required;
- 95% drawings, specifications, and calculations submitted for plancheck;
- Detailed estimates of probable construction cost submitted;
- LEED and/or Utility Company performance documents filed;
- 100% construction document back check and approval; and
- Preparation for bid.

Following approval, the Town will prepare for the bid period. Documents are anticipated to be distributed through the Town of Apple Valley for bidding.

Bidding Phase

Staff Assigned:

Architect Principal
Architect Project Manager
Architectural Technical Support Staff as Required
Consulting Engineers as Required for Inquiries and Addendums

Dougherty + Dougherty will assist the Town of Apple Valley in identifying and encouraging qualified contractors to bid. The architectural and engineering team will respond to questions during the bid or negotiation period and will issue addenda as required. Services include:

- Facilitation of a contractor pre-bid meeting;
- Response to telephone/FAX inquiries;
- Issuance of addenda as required;
- Attendance at the bid opening; and
- Assistance in assessing the bids.

We are experienced in a variety of project delivery methods, including working with construction managers on design-bid-build or multi-prime contracts, and are prepared to support the Town as the project progresses into the construction phase of the work.



Construction Administration Phase

Staff Assigned:

Architect Principal	Civil Engineer and Staff
Architect Project Manager	Structural Engineer and Staff
Architectural Job Captain	Mechanical/Plumbing Engineer and Staff
Architectural Technical Support Staff	Electrical Engineer and Staff
	Landscape Architect and Staff

The architect will provide the Town of Apple Valley with the full scope construction administration support services, Construction period services include:

- Attendance at regular meetings with minutes and task lists;
- Review of submittals and shop drawings;
- Review of and response to all RFIs/RFC's;
- Maintenance of all logs;
- Review of all Pay Requests, with the review of the maintenance of record drawings;
- Review and resolution of all construction related issues and changes to the work;
- Preparation of punch lists and punch list back check;
- Issuing of the Certificate of Substantial Completion; and
- Review and issuing of electronic and hard copy record drawings.

D+D will be actively involved in the review of proposed construction changes, and will represent the Town in contractor negotiations and construction contract resolution. We will also aggressively monitor the construction schedule and require updated schedules and maintained record drawings prior to the approval of contractor requests for payment. The Town will be provided with all warranties and guarantees, and all maintenance manuals, reviewed by the architect and engineers for conformance to the documents. We will be available to assist the Town of Apple Valley with move-in and mobilization, and will also be available for post-occupancy evaluation and warranty issue follow-up as required.

Interior Design Services Option

Dougherty + Dougherty is please to offer in-house services for interior design. The selection of finish materials, window covering and colors is a part of our basic services. Additional interior design services include:

- Selection and specification of fixtures, furniture and equipment;
- Development of furniture plans;
- Assistance in the development of purchase orders;
- Support during bid or for procurement contract piggy-back participation;
- Assistance with delivery and installation; and
- Assistance with move-in and mobilization.

The associated fees for this work will be a direct reflection of the scope as determined.

Dougherty + Dougherty is committed to being your collaborative partner form the beginning of the design and construction process to the delivery of the completed project. Our personal service includes the active participation of the Principals and Project Manager representing the firm. Please feel free to contact our previous clients to confirm this commitment. We look forward to the opportunity to provide this same level of service to the Town of Apple Valley.



Town of Apple Valley

Town Hall Facility

Exhibit B

Amended and Restated Professional Services
Agreement Dated December 9, 2008

DOUGHERTY • DOUGHERTY ARCHITECTS LLP

A. ESTIMATED FEE PROPOSAL

Town of Apple Valley

Town Hall New Facility For Expansion

With the Added Fees for the Community Room & Revision fo Mechanical System and Elimination of the Access Floor System

Architectural Design Services

Date: Revised December 9, 2008

D+D Proj. No. 20715.00

The following itemized cost proposal is prepared as a supplement to our proposals of April 27, 2007, revised June 29, 2007, revised December 9, 2008

The following itemized cost proposal is prepared as a supplement to our proposal of April 27, 2007, revised June 29, 2007.

Hourly rates include direct personnel expense, overhead, and profit. The building is described to be 38,800 s.f. with an estimated Total Project Cost of \$11 million dollars. The estimated ratio of the Total Project Budget to the Construction Budget recognizes a factor of 15%. Therefore, the Construction budget is assumed to be \$9,350,000, implying the need for a budget/scope reconciliation to reduce the estimated square footage. This fee proposal is based upon the \$9,350,000 of available funding, and is to be amended if additional funding becomes available, resulting in a larger project.

Schematic Design Phase (15%) (includes Pre-Design and Programing)

Architect Principal	40 hrs. x	\$160 /hr. =	\$6,400
Architect Project Manager	140 hrs. x	\$130 /hr. =	\$18,200
Architect Job Captain	180 hrs. x	\$110 /hr. =	\$19,800
Architectural Designer	180 hrs. x	\$110 /hr. =	\$19,800
Architect Technical	180 hrs. x	\$95 /hr. =	\$17,100
Civil Engineer	30 hrs. x	\$160 /hr. =	\$4,800
Structural Engineer	48 hrs. x	\$160 /hr. =	\$7,680
Mechanical/Plumbing Engineer	32 hrs. x	\$140 /hr. =	\$4,480
Electrical Engineer	40 hrs. x	\$140 /hr. =	\$5,600
Landscape Architect	20 hrs. x	\$140 /hr. =	\$2,800
Cost Estimator	42 hrs. x	\$130 /hr. =	\$5,460

Subtotal: \$112,120

Design Development Phase (20%)

Architect Principal	20 hrs. x	\$160 /hr. =	\$3,200
Architect Project Manager	120 hrs. x	\$130 /hr. =	\$15,600
Architect Job Captain	160 hrs. x	\$110 /hr. =	\$17,600
Architectural Designer	160 hrs. x	\$110 /hr. =	\$17,600
Architect Technical	230 hrs. x	\$95 /hr. =	\$21,850
Civil Engineer	48 hrs. x	\$160 /hr. =	\$7,680
Civil Tech	48 hrs. x	\$90 /hr. =	\$4,320
Structural Engineer	70 hrs. x	\$160 /hr. =	\$11,200
Structural Technical	70 hrs. x	\$90 /hr. =	\$6,300
Mechanical/Plmbg. Engineer	48 hrs. x	\$140 /hr. =	\$6,720
Mechanical Technical	48 hrs. x	\$90 /hr. =	\$4,320
Electrical Engineer	56 hrs. x	\$140 /hr. =	\$7,840
Electrical Technical	56 hrs. x	\$90 /hr. =	\$5,040
Landscape Architect	36 hrs. x	\$140 /hr. =	\$5,040
Landscape Technical	40 hrs. x	\$90 /hr. =	\$3,600
Cost Estimating	90 hrs. x	\$130 /hr. =	\$11,700

Subtotal: \$149,610



Construction Documents Phase (40%)

A. Preparation of Construction Plans and Specifications. (35%)

Architect Principal	12 hrs. x	\$160 /hr. =	\$1,920
Architect Project Manager	200 hrs. x	\$130 /hr. =	\$26,000
Architect Job Captain	400 hrs. x	\$110 /hr. =	\$44,000
Architect Technical	800 hrs. x	\$90 /hr. =	\$72,000
Civil Engineer	80 hrs. x	\$160 /hr. =	\$12,800
Civil Technical	100 hrs. x	\$90 /hr. =	\$9,000
Structural Engineer	120 hrs. x	\$160 /hr. =	\$19,200
Structural Technical	160 hrs. x	\$90 /hr. =	\$14,400
Mechanical/Plmbg. Engineer	90 hrs. x	\$140 /hr. =	\$12,600
Mechanical Technical	100 hrs. x	\$90 /hr. =	\$9,000
Electrical Engineer	100 hrs. x	\$140 /hr. =	\$14,000
Electrical Technical	120 hrs. x	\$90 /hr. =	\$10,800
Landscape Architect	60 hrs. x	\$140 /hr. =	\$8,400
Landscape Technical	60 hrs. x	\$90 /hr. =	\$5,400
Cost Estimating	120 hrs. x	\$130 /hr. =	\$15,600
Clerical (Specifications)	40 hrs. x	\$80 /hr. =	\$3,200

Subtotal: \$278,320

B. Planchecking/backchecking (5%)

Architect Project Manager	20 hrs. x	\$130 /hr. =	\$2,600
Architect Job Captain	60 hrs. x	\$110 /hr. =	\$6,600
Architect Technical	60 hrs. x	\$90 /hr. =	\$5,400
Civil Engineer	10 hrs. x	\$160 /hr. =	\$1,600
Structural Engineer	48 hrs. x	\$160 /hr. =	\$7,680
Mechanical Engineer	16 hrs. x	\$140 /hr. =	\$2,240
Electrical Engineer	24 hrs. x	\$140 /hr. =	\$3,360
Landscape Architect	6 hrs. x	\$140 /hr. =	\$840

Subtotal: \$30,320

Bidding Phase (5%)

A. Provide bidding support services, including response to inquiries, issue of addenda, attendance at bid opening, and evaluation of bids.

Architect Principal	4 hrs. x	\$160 /hr. =	\$640
Architect Project Manager	72 hrs. x	\$130 /hr. =	\$9,360
Architect Job Captain	60 hrs. x	\$110 /hr. =	\$6,600
Architect Technical	60 hrs. x	\$90 /hr. =	\$5,400
Engineering Support	60 hrs. x	\$140 /hr. =	\$8,400

Subtotal: \$30,400



Construction Administration Phase (20%)

A. Provide construction administration (includes punchlist and as-builts)

Architect Principal	20 hrs. x	\$160 /hr. =	\$3,200
Architect Project Manager	380 hrs. x	\$130 /hr. =	\$49,400
Architect Job Captain	180 hrs. x	\$110 /hr. =	\$19,800
Architect Technical	170 hrs. x	\$95 /hr. =	\$16,150
Civil Engineer	54 hrs. x	\$160 /hr. =	\$8,640
Civil Technical	48 hrs. x	\$90 /hr. =	\$4,320
Structural Engineer	68 hrs. x	\$160 /hr. =	\$10,880
Structural Technical	54 hrs. x	\$90 /hr. =	\$4,860
Mechanical/Plmbg. Engineer	56 hrs. x	\$140 /hr. =	\$7,840
Mechanical Technical	48 hrs. x	\$90 /hr. =	\$4,320
Electrical Engineer	60 hrs. x	\$140 /hr. =	\$8,400
Electrical Technical	48 hrs. x	\$90 /hr. =	\$4,320
Landscape Architect	24 hrs. x	\$140 /hr. =	\$3,360
Landscape Technical	16 hrs. x	\$90 /hr. =	\$1,440
Subtotal:			\$146,930
Total Fee			\$747,700

Interior Design Option (no vested interest relationships with vendors)

Architect Principal/Interior Designer	120 hrs. x	\$160 /hr. =	\$19,200
Architect Project Manager	32 hrs. x	\$130 /hr. =	\$4,160
Architect Technical	100 hrs. x	\$95 /hr. =	\$9,500
Total Estimate (varies related to scope)			\$32,860

Notes:

1. Reimbursable expenses for submittals include reproduction and delivery at 1.10 x direct cost (not including reproduction for bid or construction plans). N.T.E. \$30,000
2. Fee includes a virtual model, digital renderings, and photographic services.
3. Fee includes 100% electronic documents, plotting, fax, e-mail, and in-house printing for A/E use.
4. Other special consulting services, such as Hazardous Materials Consultant, Food Services Consultant, or Acoustical Consultant are available as additional services as required. It is assumed that the Town will provide contact personnel and contracted vendors for low-voltage technology, security and telephone systems.

Total Project Fee Proposal	\$810,560
Additions of the Community Room	\$148,800
Revision of Mechanical System and Elimination of Access Floor System	\$ 6,870
Revised Project Fee Proposal	<u>\$966,230</u>

EXHIBIT C

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Town in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to Town.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but

covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to Town for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval of Town following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the consultant and “Covered Professional Services” as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must “pay on behalf of” the insured and must include a provision establishing the insurer’s duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and Town agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds Town, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Consultant also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant’s employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against Town regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

- 3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the Town or its operations limits the application of such insurance coverage.**
- 4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Town and approved of in writing.**
- 5. No liability policy shall contain any provision or definition that would serve to eliminate so-called “third party action over” claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.**
- 6. All coverage types and limits required are subject to approval, modification and additional requirements by the Town, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect Town’s protection without Town’s prior written consent.**
- 7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant’s general liability policy, shall be delivered to Town at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Town has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by Town shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at Town option.**
- 8. Certificate(s) are to reflect that the insurer will provide 30 days notice to Town of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will “endeavor” (as opposed to being required) to comply with the requirements of the certificate.**

- 9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to Town.**

- 10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to Town for review.**

- 11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to Town. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the Town. At that time the Town shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.**

- 12. The Town reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the Town will negotiate additional compensation proportional to the increased benefit to Town.**

- 13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.**

- 14. Consultant acknowledges and agrees that any actual or alleged failure on the part of Town to inform Consultant of non-compliance with any**

insurance requirement in no way imposes any additional obligations on Town nor does it waive any rights hereunder in this or any other regard.

- 15. Consultant will renew the required coverage annually as long as Town, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until Town executes a written statement to that effect.**
- 16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Town within five days of the expiration of the coverages.**
- 17. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to Town, its employees, officials and agents.**
- 18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.**
- 19. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.**
- 20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.**
- 21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge Town or Consultant for the cost of additional insurance coverage required**

by this agreement. Any such provisions are to be deleted with reference to Town. It is not the intent of Town to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against Town for payment of premiums or other amounts with respect thereto.

Consultant agrees to provide immediate notice to Town of any claim or loss against Consultant arising out of the work performed under this agreement. Town assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Town.