



Town of
Apple Valley
California

REQUEST FOR PROPOSALS

Public Opinion Polling and Outreach Consultant Services



PROPOSALS DUE BY March 20, 2024, BY 4:30 PM PST



**TOWN OF APPLE VALLEY, CALIFORNIA
REQUEST FOR PROPOSALS – PUBLIC OPINION POLLING
AND OUTREACH CONSULTANT SERVICES**

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1. BACKGROUND

The Town of Apple Valley (herein referred to as “Town”) is located in the heart of the Victor Valley in the County of San Bernardino, at an elevation of 3,000 feet. Known as the "High Desert", Apple Valley is strategically located 95 miles northeast of the Los Angeles metropolitan area, 140 miles north of San Diego, and 185 miles south of Las Vegas. The Town has 78 square miles in its incorporated boundaries, a sphere of influence encompassing 200 square miles, and home to over 76,000 residents. The Town’s General Fund Budget for Fiscal Year 2023-24 is approximately \$35.8 million.

The Town operates under a “council-manager” form of government. Policy making and legislative authority are vested in the Town Council. Apple Valley is governed by an elected Mayor and four Council Members elected by single-member district elections.

Every even-numbered year an election is held for term-ending Council district seats and the Mayor. Individuals for Council districts are elected to serve four-year terms and the Mayor serves a two-year term. The Town Council is responsible, among other matters, for passing ordinances, adopting the Town budget, and appointing committee members.

The Town Manager is the chief administrator of the Town, responsible for coordinating and directing the resources of the Town government to carry out the programs, policies, and ordinances set by the elected Town Council, managing the daily operations of the Town, and for hiring executive management staff, and employees.

The Town provides a full range of municipal services including police protection, construction and maintenance of Town streets and storm drains, connection to Town sewer, parks and Town right-of-way maintenance, community recreation activities, building inspections, licenses and permits, and public facilities. Town departments include Town Manager, Town Clerk/Risk Management, Economic and Community Development Services - which is comprised of Planning/Permitting, Building/Inspection Services, Housing, and Engineering; Finance, Human Resources, Information Technology, Parks & Recreation, Police, and Municipal Services – which is comprised of Code Enforcement, Fleet Management, Grounds, Public Works and Sewer.

The Town is seeking proposals from qualified firms with experience in conducting public opinion polls, communicating with the public, and developing strategic recommendations for pursuing revenue raising ballot measures.

The Town, on a preliminary basis, has identified high priority structural funding requirements and programs/services that remain unfunded and that do not have a future revenue source available. The Town relies primarily on property tax, sales tax, and grants as sources of revenue. Apple Valley residents have become accustomed to certain services which have historically been provided through State or Federal funding. However, during a time when the Town continues to see a rising increase in cost for services, we have also experienced a steady decrease in these other funding sources causing many programs to become underfunded.

Exploring new revenue sources is a primary objective in order to maintain current service levels while also meeting the demand of the Town’s growing population.

The Scope of Work outlined below shall accomplish the purpose of this Request for Proposals (RFP):

- To conduct a public opinion survey.
- Evaluate the probability of voter approval of a revenue raising ballot measure.
- Present data to provide guidance on strategies for placing a revenue raising ballot measure on the November 2024 ballot.
- Should the Town Council approve the placement of a measure on the ballot, provide public education and outreach.

2. ACTIVITIES AND TIMELINES

ACTIVITY	DATE
Release of published RFP	February 29, 2024
Advertise & Solicit RFP	February 29, 2024
Deadline for receiving all questions	March 8, 2024, by 12:00pm
Publish response to questions (Posted online only)	March 11, 2024, by 5:00pm
Request for Proposals (RFP) responses due to the Town	March 20, 2024, by 4:30pm
Review Committee evaluates and ranks proposals	March 21-27, 2024
Conduct Interviews	April 3, 2024
Notice of contract award	April 9, 2024
Contract executed	April 10, 2024

3. SCOPE OF SERVICES

The services to be provided by the selected firm shall include, but are not limited to the following:

- Consult with Town staff, and possibly individual Town Council Members, on the design of the questionnaire based on research objectives and public service funding needs.
- Review local voter and resident demographics, polling and results on past revenue/ballot measures and other data sources.
- Create a polling and public outreach strategy that attempts to capture voter opinion on and assess likelihood of success of different approaches and taxation amounts and

ensure voters are accurately informed and understand the outcome of their vote(s) associated with any potential ballot measure.

- To this end, the consultant should include a methodical exploration of general thoughts on proposed ballot measures through focus groups.
- Based on the results of the focus groups, develop an analysis as to the underlying dynamics of these thoughts and opinions – a sense of ‘why’ the opinions of the focus groups are such.
- Test messages in favor of the ballot measure and messages that would drive people to vote no on the measure.
- Based on these analyses and conclusions, create a ballot measure campaign roadmap for successful passage of the measure.
 - To this end, develop a strategy to understand how many voters might be undecided or willing to consider a vote in favor of the measure if they had initially stated they would vote against it.
 - Create a pro forma analysis based on this understanding and recommend a ‘go-no-go’ decision for the Town to either engage in further scope to inform the electorate on the unfunded needs of the Town and how it correlates to the merits of the ballot measure or to abandon efforts in this regard in favor of a more effective course of action.
- Present to the Town Council the information gathered regarding current sentiment towards unfunded public service needs, willingness to fund these additional costs, potential funding mechanisms to cover these costs, and acceptable levels of additional taxation.
- If the Town moves forward with the placement of a revenue measure on the November 2024 ballot, the scope of work includes assistance in developing ballot measure, ordinance language, and public outreach. Public education and outreach will be critical. The intent of the public outreach phase is to ensure voters are accurately informed and understand the outcome of their vote(s) associated with the ballot measure. The Consultant will be required to collaborate with Town staff to develop a public outreach plan, that should include:
 1. Message development to ensure voters understand the outcome of their vote(s).
 2. Develop appropriate information and education materials.
 3. Identification of the most effective methods of information distribution for the Town of Apple Valley.
 4. Design, advertise and conduct 3 public outreach meetings in conjunction with Town staff.
 5. Ballot language development.

Project Timing

The timing of the public opinion research and any public outreach is crucial. If a measure is to be placed on the November 5, 2024, ballot, the Town of Apple Valley Town Council must adopt a resolution no later than July 23, 2024. If the public polling Professional Services Agreement is approved, the Town seeks to have the polling effort and report completed by June 2024. This will allow staff time to prepare a report to the Town Council for July 23, 2024, in conjunction with the Consultant.

If the Board decides to proceed with an ordinance for a ballot measure, public outreach (Phase 2) would commence and be completed by November 5, 2024.

4. Proposal Format Guidelines

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the Town's requirements and its approach to successfully provide the products and/or services on time and within budget. Only that information which is essential to an understanding and evaluation of the proposal should be submitted.

All submittals shall be from a Consultant that has:

1. A demonstrated experience in producing and conducting statistically reliable polling surveys for California sales tax revenue ballot measures.
2. Experience providing strategic guidance and recommendations to California governmental agencies in developing successful revenue ballot measures.

All proposals shall address the following items in the order listed below and shall be listed as A through H in the proposal document.

A. Cover Page

Provided on page 13 of this RFP, this is to be used as the first page of the submission. This form must be fully completed and signed by an authorized officer of the firm; incomplete forms may result in the disqualification of the related response.

B. Table of Contents

Include a complete and clear listing of headings and pages to allow easy reference to key information.

C. Executive Summary

The Executive Summary must convey a basic understanding of the prospective project and its key objectives and an overview of the Project team. The letter must state why the candidate is interested in pursuing the project, how the project relates to other work the candidate has successfully performed, consultant philosophy as it pertains to working with cities to evaluate revenue raising opportunities and public opinion polls, and why the candidate should be selected. Typically, this section should not exceed 1 to 2 pages.

D. Approach and Methodology

Indicate how the firm will approach this project to provide the best value to the Town and demonstrate the necessary resources required to perform the intended services.

As part of the proposal, firms should outline a proposed strategy, based on previous experience, to design and undertake community polling over the next 4 months to ascertain the feasibility of passing a revenue raising ballot measure and help shape successful communications. It is anticipated that this will include recommendations as to the number of polls, the cost of each, any other innovative mechanisms useful for gauging public opinion, and the recommended timing of baseline and tracking polls and other measurements leading up to the November 2024 special election.

Proposers may include other optional services not requested that the consultant believes may assist in the process. There is also interest in exploring the use of technology, social media and other innovative options for gathering community input/opinions.

E. Schedule / Proposed Calendar

The Proposer must include a proposed calendar and schedule based on polling results being ready for review by the Town in June and July 2024, or at intervals recommended by the firm provided that the Town would plan to place this item on a November 2024 election ballot. Using the expertise of the firm and based upon the best information available at this time, the firm shall graphically demonstrate a schedule that depicts the number of days in duration and a start and finish date by phase. The schedule shall include the phases/tasks identified in the scope of services outlined above. Each firm is encouraged to provide any additional information or description of resources that are pertinent to this project.

F. Firm Information / Organization

The Proposer must identify the firm representative who will be working directly with the Town and engaged in managing the work. Resumes must be included which reference the individual's qualifications and experience in managing similar projects. List relevant projects worked on, dates showing length of time spent on each project and the specific duties and responsibilities for each project.

Identify the responsibilities of other key individuals besides the main point of contact who will be assigned to the proposed contract, and who will have major responsibilities for performance of the services required. Include resumes that list relevant polling projects worked on, dates showing the length of time spent on each project and the specific duties and responsibilities for each project.

The Town reserves the right to approve or disapprove any change to the successful Proposer's firm representative. Personnel changes that impact the contract may result in the cancellation of the contract.

G. Staffing

Provide a list of principals, including any sub-Proposers, with their qualifications. Upon award of contract, principals may not be changed without approval of the Town. Describe firm's support organization, accessibility, and quality assurance methods for optimizing staff utilization.

Include a summary of your firm's demonstrated capability, including the length of time that you have provided the services being requested in this Request for Proposal.

H. References

The information requested in this section should describe your qualifications within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

- Provide three (3) to five (5) references that received similar services from your firm. The Town may contact the organizations and individuals.
 - Client name.
 - Client project manager name, telephone, and electronic mail address.
 - Project description.
 - Names of key staff that participated on each project and their specific responsibilities.
 - Project start and end dates.
 - Example of public polling surveys, reports, and education campaign/materials.
 - Results of subject ballot measure (if one was in fact placed onto a ballot).

I. Proposal Forms

- Proposal cover page (Exhibit A)
- Certificate of Insurance

J. Fee / Cost Proposal

A fee proposal should be submitted and include material, supplies, and any associated travel expense rates, if not already included in the personnel rate. This proposal should be in a **separate sealed envelope** marked "Fee Proposal" along with your firm's name. Failure to provide a separate sealed cost proposal may result in your firm's disqualification.

The cost proposal must be all inclusive and itemize all costs associated with public polling, outreach, and other costs and the cost for additional public outreach separated out as an option as a part of the Proposer's recommended solution. For the purposes of this RFP, this includes, but is not limited to the following:

1. Hourly rates for regular business hours (state regular business hours), if applicable.
2. Any additional travel or trip charges, if any.
3. Include any minimums that apply.
4. Include any alternate pricing structures (such as block of hours).
5. Cost proposal must refer/reference specific Scope of Work items.
6. If a specific requested service, function, or option is not offered/ available please indicate.
7. Provide the total cost for this assignment.
8. Include any general comments on pricing, or different levels of service.
9. Pricing should include all fees associated with this task.
10. It is expected that all proposers responding to this RFP will offer government or comparable most favorable rates. Any and all discount offers must be clearly delineated.

PLEASE NOTE: The Town of Apple Valley does not pay for services before it receives them. Therefore, do not propose contract terms that call for upfront payments or deposits.

5. Evaluation and Selection Criteria

The contract will be awarded to the Proposer who submits a proposal that, in the judgment of the Town of Apple Valley, is best able to produce a quality review for the best price. The past performance of the Proposer, as verified by references, will be of important consideration.

The following is an outline of the procedures the Town will use in the selection process:

- a. Town organizes the Screening and Selection Committee (Committee).
- b. Committee reviews the proposals submitted by the prospective Proposers.
- c. Committee selects proposals which qualify based on the qualifications and previous experience performing similar work.
- d. Committee will determine and identify the consultants that are qualified to perform the services and will rank the consultants based on their demonstrated competence and professional qualifications deemed necessary for the satisfactory performance of the services required. Qualifications will be based on, but not limited to, the following considerations:
 - Quality and completeness of proposal.
 - Proposer's experience, including the experience of staff to be assigned to the project and with other engagements of similar scope and complexity.
 - Proposer's knowledge of public opinion research and voter-approved revenue planning services.
 - Proposer's ability to perform the work within the time specified and budget.
 - Financial responsibility (years in business, number of projects completed, annual volume of work in dollars, etc.).
 - Proposer's prior record of performance with other cities or governmental agencies.
 - Familiarity with the unique revenue challenges faced by California municipalities.
 - References
- e. Committee will make its selection based on qualifications submitted in the written proposal and demonstrated during oral interview. Contract negotiations will be undertaken with the firm ranked most qualified, with the Town's goal being to secure the services at a cost equivalent to the lowest cost offered to the Town by an approved and qualified consultant and which provides to the Town the best long range economic value.

The Town reserves the right, without qualification, to:

1. Reject all proposals.
2. Exercise discretion and apply its judgment with respect to any proposal submitted.

Criteria Max Points Rating

A.	Completeness of Proposal	Pass/Fail
B.	Qualifications	35%
C.	Service Delivery/Methodology	35%
D.	Reasonable Cost of Service	30%

Assumptions

With Town Council approval, a successful consultant shall be awarded a Professional Services Agreement. At the discretion of the Town, deliverables shall be provided to the Town in the form of hard copies as well as electronic copies for all specifications, reports, and all documents, including but not limited to plans, maps, analyses and specifications, and any necessary technical data.

The Town Manager, or designee, will be the main point of contact to facilitate the various services requested.

The Town will screen and evaluate proposals primarily on the basis of demonstrated professional expertise. The consultant shall be chosen based on the firm’s demonstrated competence, abilities, overall professional qualifications, cost competitiveness, and time to perform.

6. Process for Submitting Proposals

A. Content of Proposal.

The proposal must be submitted using the format as indicated in the proposal format guidelines.

B. Number of Proposals.

Submit FOUR (4) copies of your proposal to allow for thorough evaluation and comparative analysis.

Proposal should be 8 ½ x 11 inches, printed two-sided on recycled and recyclable paper with removable bindings.

An electronic version in PDF format, would be helpful, but is not required.

C. Submission of Proposals.

The proposal shall be signed by an authorized individual of the professional firm. Complete written proposals must be submitted in sealed envelopes, with a separate envelope for the Fee Proposal, no later than 4:30 p.m. PST on Wednesday, March 20, 2024.

The outside of the proposal package shall be prominently marked with the following identification: "RFP Professional Services – Public Opinion Polling & Outreach Consultant Services" together with the name and address of the proposer.

Proposal shall be submitted by mail, hand-delivered or sent by courier to the following address:

**Town of Apple Valley
Town Manager's Office
14955 Dale Evans Parkway
Apple Valley, CA 92307
Attn: Julie Ryan, Special Projects Manager**

RE: Public Opinion Polling & Outreach Consultant Services

NOTE: Late, faxed, or emailed proposals will not be accepted. All proposals and documents submitted become the property of the Town. Information considered proprietary shall be identified as such in the proposal.

D. Inquiries

If the Proposer is in doubt as to the meaning of any part of this RFP or finds discrepancies or omissions, the Proposer shall submit to the Town a written request for information or clarification before March 8, 2024, by 12:00 p.m. to ensure sufficient time for staff to respond prior to the proposal submittal deadline. Responses will be posted online by 5:00 p.m. on March 11, 2024. All questions regarding this RFP must be submitted in writing to the attention of Julie Ryan, either in hard copy or via email at: jryan@applevalley.org. Proposers are prohibited from contacting members of the Town Council or staff regarding this submittal. Failure to adhere to this provision shall be cause for disqualification from this process.

E. Conditions for Proposal Acceptance

This RFP does not commit the Town to award a contract or to pay any costs incurred for any services. The Town, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source, or to cancel this RFP in part or its entirety, and to waive minor irregularities in any proposal.

7. Standard Terms and Conditions

A. Contract and Insurance Requirements. The selected proposer shall be required to enter into a Town Professional Services Agreement approved by the Town Attorney (Exhibit B). Proposers shall be prepared to accept the terms and conditions of the Town's Standard Professional Services Agreement including all insurance requirements. The successful consultant's bid and the terms and conditions stated in this RFP will be made part of the contract between the Town of Apple Valley and the consultant. This RFP outlines the specifications and requirements, but not necessarily all of the terms and conditions that will be incorporated into the final agreement between the Town of Apple Valley and the successful proposer.

- B. Certificate of Insurance.** Insurance coverage with a minimum aggregate coverage of \$1,000,000 for Professional Errors and Omissions and General Liability will be required. A statement certifying the required insurance coverage shall be provided.
- C. Business License.** Prior to entering into an Agreement, the selected Consultant must have a current Town of Apple Valley Business License.
- D. Reservations.** This RFP does not commit the Town to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. No payment of any kind will be provided to the consultant responding to this RFP, or parties they represent, for obtaining any of the information solicited.
- E. Public Records.** All proposals submitted in response to this RFP become the property of the Town. Information in the proposal, unless specified as trade protected, may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public Records Act.
- F. Right to Cancel and Amend.** The Town reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements. If the Town cancels or revises the RFP, all consultants will be notified in writing.
- G. Proposer's Questions.** The Town will not give verbal answers to inquiries regarding information in this RFP nor verbal instructions prior to the submission deadline.
- H. Additional Information.** The Town reserves the right to request additional information and/or clarification from any or all consultants.
- I. Conflict of Interest.** Consultant covenants that the company, its officers, employees and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the Town. Consultant further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. Consultant certifies that to the best of consultant's knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the Town.
- J. Release of Public Information.** Consultants who respond to this RFP who wish to release information to the public regarding selection, contract award or data provided by the Town must receive prior written approval from the Town before disclosing such information to the public.
- K. Non-Assignment.** If a contract is awarded, the selected consultant shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the Town which shall not be unreasonably withheld.
- L. Equal Employment Opportunity Compliance.** The selected consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The consultant shall take affirmative action to ensure that all

employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.

M. Right to Audit. The selected consultant shall maintain such financial records and other records as may be prescribed by the Town or by applicable federal and state laws, rules, and regulations. The selected consultant shall retain these records for a period of three years after final payment, or until they are audited by the Town, whichever event occurs first. These records shall be made available during the term of the contract or service agreement and the subsequent three-year period for examination, transcription, and audit by the Town or its designees.

N. Protest Procedures. Any protest relating to the form or content of the RFP or Contract Documents must be submitted in writing to the Town Clerk's office at least ten (10) business days before the original date set for the RFP opening. Any candidate who submits a Proposal without making a protest shall be deemed to have waived any objection to the form or content of the RFP or Contract Documents not previously stated in writing.

Candidates may file a protest with the Town Clerk's office. The protest must:

- a. Be filed in writing not later than 5:00 p.m. on the fifth (5th) business day after the selection of a consultant.
- b. Clearly identify the specific alleged irregularity or other basis for the protest.
- c. Specify, in detail, the factual and legal grounds for the protest.
- d. Include all relevant supporting documentation with the protest at time of filing.

If the protest does not meet all requirements, the Town may reject it without further review.

If the protest is timely and complies with all the above requirements, the Town Clerk's office, or other designated Town staff member, shall review the protest, any response from the challenged proposer, and all other relevant information. The Town will provide a written response to the protestor.

8. Required Proposal Documents

1. Proposal cover page (Exhibit A)
2. Town Sample Professional Services Agreement (Exhibit B)

Exhibit A

PROPOSAL COVER PAGE

Name of Firm, Entity or Organization:	
Federal Employer Identification Number (EIN):	
State of California License Number (If Applicable):	
Name of Contact Person:	
Title:	
E-Mail Address:	
Mailing Address:	
Street Address (if different):	
City, State, Zip:	
Telephone:	Fax:
Organization:	
Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other <input type="checkbox"/>	
If Corporation:	
Date of Incorporation:	State of Incorporation:
States Registered in as Foreign Corporation:	
Authorized Signature:	
Print Name: _____	
Signature: _____	
Title: _____	
Phone: _____	
<i>This document must be completed and returned with your Submittal.</i>	

*****MODEL - REMOVE THIS TITLE WHEN USED*****

**TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 20____, 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 *****INSERT NAME OF COMPANY*****, a *****INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.*****, with its principal place of business at *****INSERT ADDRESS***** ("Consultant"). Town and Consultant are sometimes individually referred to herein 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 *****INSERT TYPE***** services to public clients, is licensed in the State of California, and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such professional services for the *****INSERT NAME OF PROJECT, AND CONTRACT NUMBER, IF APPLICABLE***** project ("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 *****INSERT TYPE***** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. *****INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE: Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I." attached hereto and incorporated herein by reference.*****

3.1.2 Term. The term of this Agreement shall be from *****INSERT DATE***** to *****INSERT DATE*****, unless earlier terminated as provided herein. *****INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED**

THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE: The Town shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than [INSERT NUMBER] additional one-year terms.***] 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 Fees and Payments

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed [***INSERT AMOUNT WRITTEN OUT] (\$[***INSERT NUMBER]) without written approval of the Town Council or Town Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to Town a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. Town shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the Town disputes any of Consultant's fees, the Town shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the Town for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Town, or included in Exhibit "C" of this Agreement.

3.2.4 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 the Town.

3.2.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "C."

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. 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. Any personnel performing the Services on behalf of Consultant shall 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.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

3.3.4 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. The key personnel for performance of this Agreement are as follows: *****INSERT NAME AND TITLE*****.

3.3.5 Town's Representative. The Town hereby designates *****INSERT NAME AND TITLE*****, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("Town's Representative"). Town's Representative shall have the power to act on behalf of the Town for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The Town Manager shall be authorized to act on Town's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in Section 3.2 of this Agreement. Consultant shall not accept direction or orders from any person other than the Town Manager, Town's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates *****INSERT NAME AND TITLE*****, or his/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/her 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.

3.3.7 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.

3.3.8 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. 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, and that such licenses and approvals shall be maintained throughout the term 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.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the Town and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the Town will suffer damage.

3.3.9.2 Neither Town nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Services); and (4) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

3.3.9.4 Delays shall not entitle Consultant to any additional compensation regardless of the Party responsible for the delay. Notwithstanding the foregoing in this section, the Town may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification. 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 the Services and this Agreement. All violations of such laws and regulations shall be grounds for the Town to terminate the Agreement for cause.

3.3.10.1 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.2 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. Consultant shall also comply with all relevant provisions of Town's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.3 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify Town against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.4 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.

3.3.11 Insurance. *****TOWN RISK MANAGER TO REVIEW PRIOR TO EACH USE*****

3.3.11.1 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.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. *****NOTE: If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following: (1) a Personal Automobile Liability policy for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; or (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees). ALWAYS DELETE THIS SECTION IF NOT USED.*****

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): *****INCLUDE ONLY IF APPLICABLE; DELETE OTHERWISE***** Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

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

(A) Commercial General Liability: (1) Additional Insured: The Town, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): *****INCLUDE ONLY IF APPLICABLE; DELETE OTHERWISE***** (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium. (2) Contractual Liability Exclusion Deleted: This insurance shall include contractual liability applicable to this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the Town, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the Town, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the Town, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Town, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the Town and shall protect the Town, its officials, officers, employees, agents, and volunteers in the same manner and to the same

extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the Town, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the Town for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Town. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Town evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.3.11.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the Town to inform Consultant of non-compliance with any requirement imposes no additional obligation on the Town nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Town, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Town will be promptly reimbursed by Consultant or Town will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Town may cancel this Agreement.

(C) The Town may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the Town nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the Town and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Agreement or law.

(F) 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.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the Town, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the Town, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the Town.

3.3.12 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the Town's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the Town, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. Town may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this section, or any other relevant water quality law, regulation, or policy.

3.4 Labor Code Requirements.

3.4.1 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 16000, *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. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the Town. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.3 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 Worker's 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.

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. 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.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 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.

3.6.1.2 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.

3.6.1.3 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.

3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: [INSERT BUSINESS NAME]
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: [INSERT NAME AND TITLE]

Town: Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
ATTN: [INSERT NAME AND TITLE]

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.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 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.

3.6.3.2 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.

3.6.3.3 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.

3.6.3.4 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.

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Town, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the

Project. Nothing furnished to Consultant which 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 publicity 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.

3.6.3.6 Confidential Information. The Town shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the Town's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the Town shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give Town written notice of Consultant's objection to the Town's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the Town, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. Town shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with Town's choice of legal counsel), and hold Town harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that Town release such information.

3.6.4 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.

3.6.5 Indemnification.

3.6.5.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of Town's choosing), indemnify and hold the Town, its 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 acts, errors or omissions, or willful misconduct 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 damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the Town. 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 Consultant, the Town, its officials, officers, employees, agents, or volunteers.

3.6.5.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.6.6 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.

3.6.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the Town. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the Town.

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

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

3.6.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.11 Assignment; Subcontracting. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Town, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of Town. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.6.12 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.

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

3.6.14 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.

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

3.6.16 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.

3.6.17 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. 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.

3.6.18 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.

3.6.19 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.20 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF APPLE VALLEY
AND *****INSERT NAME*******

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TOWN OF APPLE VALLEY

*****INSERT NAME OF CONSULTANT****

By: _____
Douglas B. Robertson
Town Manager

**[IF CORPORATION, TWO SIGNATURES,
PRESIDENT OR VICE PRESIDENT AND
SECRETARY OR TREASURER REQUIRED]**

By: _____

Its: _____

ATTEST:

Printed Name: _____

By: _____
Ms. La Vonda M. Pearson,
Town Clerk

**[DELETE THE FOLLOWING SIGNATURE
LINE IF NOT REQUIRED]**

By: _____

Its: _____

APPROVED AS TO FORM:

Printed Name: _____

By: _____
Best Best & Krieger LLP
Town Attorney

**EXHIBIT "A"
SCOPE OF SERVICES**

*****INSERT SCOPE*****

SAMPLE

**EXHIBIT "B"
SCHEDULE OF SERVICES**

*****INSERT SCHEDULE*****

SAMPLE

**EXHIBIT "C"
COMPENSATION**

*****INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES*****

[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW: In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties.]