

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND TERRA NOVA PARTNERS, INC., FOR SPECIFIC PLAN DEVELOPMENT AND ENVIRONMENTAL COMPLIANCE SERVICES

Summary Statement:

In February of this year, Mayor Pro-Tem Scott Nassif was approached by representatives and supporters of Brett Sports & Entertainment to determine whether or not the Town of Apple Valley had an interest in securing a California League (Single "A") baseball team, and building a baseball stadium for that purpose within the Town's corporate boundaries. Brett Sports & Entertainment ("Brett") is the owner of the High Desert Mavericks, the California League Single "A" franchise that has operated continuously in the City of Adelanto since 1990. After receiving a formal letter of interest from Brett, Town Manager Robinson reported to the Town Council the results of a meeting held with Brett representatives, Mayor Pro-Tem Nassif and Assistant Town Manager Henderson. As a result of this report, Mr. Robinson received approval from the Town Council to form a Baseball Stadium Task Force to study the feasibility of developing a minor league baseball stadium that would meet the standards and specifications of the National Association of Minor League Baseball and the California League.

The members of this task force were comprised of Populous, Inc., an architectural services company with the most extensive experience of any such firm in the country in designing minor league baseball stadiums and related facilities, Mayor Pro-Tem Nassif, Town Manager Robinson, Assistant Town Manager Pattison and Assistant Town Manager Henderson. During the feasibility analysis portion of this project, the task force received extensive reports from Populous, Inc., regarding minor league baseball stadiums recently constructed throughout the country, the costs related to such facilities, design parameters, methods of financing and, in some cases, related stadium development and lease agreements.

Recommended Action:

That the Town Council and Redevelopment Agency Board of Directors approve and adopt a Professional Services Agreement between Town and Terra Nova Partners, Inc., for Specific Plan and Environmental Impact Report preparation services in the amount of \$418,980; and, authorize the Town Manager, Town Attorney, Town Clerk and Assistant Town Manager for Economic and Community Development to execute said agreement.

Proposed by: Assistant Town Manager, Econ. & Comm. Dev Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A

Based upon the review and analysis of this information, three key items of interest became clear to the task force: (i) the cost of construction of minor league baseball stadiums had risen between 500% and 600% since the construction of Mavericks' stadium in 1989; (ii) in order for the Town to be able to take advantage of this opportunity, and to keep the ultimate lease payments and agreement provisions acceptable to Brett, the land for the stadium and related improvements would have to be donated free of charge to the Town; and, (iii) before the Town could engage Brett in serious negotiations, it would have to secure site control in order to assure Brett that, if agreement was reached, the Town could deliver on its legal obligations.

During the course of task force deliberations, various, potential stadium locations were analyzed by staff. Some of these potential locations were immediately discarded for one reason or another and some required further due diligence analysis. After this process was complete, the potential sites were rated by staff. Other than the sites' ability to accommodate a development of the type being considered, the key rating factor in establishing a preferred site alternative was the willingness and ability of the property owners to consider land donations to the Town for this purpose. Two land owners, owning property immediately adjacent to one another were able to meet this key requirement, HDC Group, LLC (represented by Tom Hrubik), and Bear Valley & Apple Valley 103, LLC (represented by Robert ("Bob") Shaw), respectively. After negotiations, it was determined that HDC Group, LLC, would donate 30-acres to the Town and Bear Valley & Apple Valley 103, LLC would donate 11.6-acres, for a total of 41.6-acres for the Apple Valley baseball stadium project.

The specific deal points related to the above referenced land donations are contained in the attached Site Dedication and Development Agreements, but it is important to summarize for the Council, and the general public, the key elements of the attached agreements. The Site Dedication and Development Agreements provide that the Town, at its sole cost, will (i) develop and approve a Specific Plan and Environmental Impact Report (EIR); install full-width road improvements on Geronimo Road, from Apple Valley Road to Deep Creek Road, including a traffic signal at the intersection of Apple Valley and Geronimo Roads; (ii) install full-width road improvements on Locust Road, from Geronimo Road to Bear Valley Road, including drainage systems and a traffic signal at Locust and Bear Valley Roads; and (iii) install road improvements on Bear Valley Road, from Locust Road to Cottontail Road (stadium property fronting Bear Valley Road).

In addition to the above items, the proposed 209-acre Specific Plan will contain land uses related to the baseball stadium and three additional athletic fields, commercial development and high quality, for-sale only, multifamily town homes and condominiums. The Specific Plan will further provide for the relocation of "The Mansion" project from its former, proposed location in the Deep Creek area, which was denied by court action, to an area generally located at the northwest corner of Bear Valley Road and the logical extension of Deep Creek Road, north of Bear Valley Road. Because the anticipated opening date of the stadium is April 2011, and because the stadium takes at least one-year to construct, the only way for the Town Council to accomplish its goal with respect to this project is embark upon the development of a Specific Plan in order to provide for the land uses and activities described above. In this regard, staff is recommending the approval of a professional services agreement between the Town and Terra Nova Partners for the development of the Specific Plan and Environmental Impact Report. The company Terra Nova Partners is familiar to those members of the community who have followed the development and approval of the North Apple Valley Specific Plan and the Town's first comprehensive General Plan Update since 1991, which occurred at the Town Council's last

meeting. Terra Nova's intimate knowledge of the Town enables it to use much of the data it developed while preparing the General Plan for the proposed Specific Plan development process, saving the Town money and time in carrying out this signature project.

While the Specific Plan development process is taking place, Populous, Inc., the proposed architect of record will be taking all necessary steps to design a baseball stadium facility that meets the standards and specifications of the National Association of Minor League Baseball and the California League. As noted earlier, Populous has extensive, direct, on-point experience in developing baseball stadium facilities of the type contemplated by the Apple Valley stadium development program. The proposed agreement between Populous, Inc., and the Town outlines the full scope of architectural services required by this project, including design development, cost estimating, project management, bid preparation and issuance and related services.

In the current economic climate, it is important to address how the Town would pay for the improvements it would commit itself to in the event the Council approves the actions recommended by staff. First, it is important to state up front that no Town General Fund revenues would be used to finance the Town obligations associated with this project. As the Council is aware, the General Fund is the life blood of any municipality in the state of California. As such, any transaction that would require a General Fund contribution from the Town would not be recommended by staff. In that regard, staff is pleased to note for the record that the Town obligations will be met by the issuance of lease revenue bonds (or similar financial facility), whereby the lease payments made by the High Desert Mavericks would pay for, and extinguish, the bond indebtedness associated with the successful sale of the lease revenue bonds and the cost of stadium construction. Further, the Town's redevelopment, traffic impact fee, sewer and drainage funds will pay for the public infrastructure improvements the Town will be installing. As the Assistant Town Manager for Finance & Administration has previously reported, monies in these funds are sufficient for the Town to meet its obligations in connection with the proposed baseball stadium project.

It is noted that the four proposed agreements are a package deal; that is to say this project cannot proceed as envisioned if the Council adopts one or two, but not all, of the proposed agreements. **It is also important to point out that the recommended motions are actions of both the Town and the Redevelopment Agency.** If the Council is desirous of proceeding as recommended, all four agreements must be approved and adopted. To assist the Council in this regard, staff is recommending that the Council receive one oral staff report on the four related items, but take separate actions on each of the proposed agreements. In this way, the public record will reflect four separate actions taken by the Council and Redevelopment Agency regardless of the actions taken. Based upon the foregoing, staff recommends adoption of the form motion.

**TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

**TERRA NOVA PLANNING & RESEARCH, INC. (BASEBALL STADIUM SPECIFIC PLAN)
AUGUST 25, 2009.**

This Agreement is made and entered into this 25th day of August, 2009 by and between the Town of Apple Valley, a municipal corporation organized under the laws of the State of California with its principal place of business at 14955 Dale Evans Parkway, Apple Valley, California 92307 (“Town”) and Terra Nova Planning & Research, Inc., a corporation with its principal place of business at 400 S. Farrell, Suite B-205, Palm Springs, CA 92262 (“Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing planning and environmental 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 services for the Baseball Stadium Specific Plan and related Environmental Impact Report 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 planning and environmental 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.

3.1.2 Term. The term of this Agreement shall be from August 25, 2009 until the project is officially adopted or abandoned by the Town. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of Town and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Town shall respond to Consultant's submittals in a timely manner. Upon request of Town, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

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

3.2.5 Town's Representative. The Town hereby designates the Assistant Town Manager – Economic and Community Development, or his or her designee, to act as its representative for the performance of this Agreement (“Town’s Representative”). Town’s Representative shall have the power to act on behalf of the Town for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the Town’s Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates Nicole Sauviat Criste, or her designee, to act as its representative for the performance of this Agreement (“Consultant’s Representative”). Consultant’s Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant’s Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with Town staff in the performance of Services and shall be available to Town’s staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a Town Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Town, any services necessary to correct errors or omissions which are caused by the Consultant’s failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Town to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Town, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Town, its officials, directors, officers, employees, and agents free and

harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the Town that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Town that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit

shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability.

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

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

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

(C) Workers' Compensation and Employer's Liability Coverage.

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

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Town, its directors, officials, officers, employees, agents, and volunteers.

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

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

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

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

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

3.2.12 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Town during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed four hundred and eighteen thousand nine hundred and eighty (\$418,980.00) without written approval of Town's Assistant Town Manager – Economic and Community Development. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

3.4 Termination of Agreement.

3.4.1 Termination by Town.

(a) Town shall have the right to suspend or terminate all or any portion of this Agreement without cause upon no less than five (5) days written notice to Consultant of the effective date of termination. In the event that this Agreement is terminated without cause, then Consultant shall be entitled to payment for all services actually performed by Consultant through the effective date of termination, provided, however, that Consultant shall use reasonable efforts to wind down all work for Town upon receipt of the termination notice. Consultant shall not be entitled to any additional compensation or fee for such termination.

(b) Town shall have the right to immediately suspend all or any portion of this Agreement in the event that Consultant is in breach of its obligations hereunder and Town shall have the right to terminate this Agreement if such breach is not cured, if such breach is curable, within ten (10) days of notice thereof.

3.4.2 Termination by Consultant. Consultant shall have the right to suspend performance under this Agreement in the event that Town has not made a payment due hereunder within ten (10) days of the date it is due. Consultant shall further have the right to terminate this Agreement if the Town breaches any obligation under this Agreement and the breach is not cured within thirty (30) days of written notice thereof by Consultant.

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

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

3.5 Ownership of Materials and Confidentiality.

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”). All Documents & Data shall be and remain the property of Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon

payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

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

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

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

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

Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

3.6 General Provisions.

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

Consultant:

Terra Nova Planning and Research, Inc.
Nicole Sauviat Criste, Vice President
400 S. Farrell, Suite B-205
Palm Springs, CA 92262

Town:

Town of Apple Valley
Assistant Town Manager–Economic and Community Development
14955 Dale Evans Parkway
Apple Valley, California 92307

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification.

3.6.2.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Town, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.6.2.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of Town's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.6.2.1 that may be brought or instituted against Town or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against

Town or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Town for the cost of any settlement paid by Town or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Town's attorney's fees and costs, including expert witness fees. Consultant shall reimburse Town and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the Town, its directors, officials officers, employees, agents, or volunteers.

3.6.3 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

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

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

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.7 Assignment or Transfer. Consultant shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.6.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Town include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

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

3.6.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

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

3.6.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.13 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the Town's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.15 Attorney's Fees. If either Party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.6.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

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

3.6.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

[SIGNATURES ON NEXT PAGE]

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

TOWN OF APPLE VALLEY

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

By: _____
Kenneth J. Henderson
Assistant Town Manager –
Economic and Community Development

By: _____
Nicole Sauviat Criste
Vice President

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

APPROVED AS TO CONTENT:

Frank Robinson, Town Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

John Brown, Town Attorney

Exhibit A

SCOPE OF WORK

- ❖ Review all available data and information of Town, consultant team and Terra Nova, and determine other information needed to prepare background information for Specific Plan and supporting environmental documents.
- ❖ Establish a project work and meeting schedule with Town Planning staff to assure a Logical and orderly review and drafting of Specific Plan sections, land use map and support information.
- ❖ Conduct field surveys and research and establish the physical constraints associated with the Plan area. These constraints will be mapped and used in the development of the land use plan.
- ❖ Initiate sub-consultant work on special areas of concern, including traffic study, noise impact analysis, cultural, paleontological and biological resource assessments. The environment will be characterized, issues identified and potential impacts assessed, and mitigation measures developed as necessary. Mitigation monitoring and reporting will also be developed.
 - The traffic analysis will include analysis of 34 intersections. The analysis will be completed for existing and future conditions, including three phases of development, and General Plan build out analysis, with and without the proposed project.
 - The traffic engineer will prepare a traffic control plan for ballpark activities, to include special provisions required to manage traffic during events at the ballpark.
 - The noise analysis will include current conditions and future noise levels for area road segments. It will analyze roadway noise, and the impacts of the development of the Plan area on surrounding lands. Noise generated by activities and events at the ballpark will be analyzed.
 - The cultural and paleontological resource analysis will include records searches and site survey. Any identified resources will be assessed, and mitigation included in the final report, as necessary.
 - The biological resource analysis will include an inventory of known species in the Plan area, the status of these species, and a site-specific survey. No species specific surveys are proposed. Pre-construction species surveys may be included as mitigation measures, if necessary.
 - Two visual simulations will be prepared showing Phase 1 and Phase 2 (a total of 4 simulations) to assess the visual impact of the ballpark on the surrounding environment, with a particular focus on residential development to the east. The Phase 1 simulation will show the ballpark alone. The Phase 2 will show the ballpark with the two-story senior care constructed on the intervening land.
- ❖ Research, document and, in many instances map resources will be prepared for presentation and eventual integration into Specific Plan and EIR. Research is envisioned to go forward concurrently on all fronts and to be conducted in logical groups based upon inter-relatedness of issues. For instance, noise and circulation will be developed concurrent with analyses of land use patterns.

- ❖ Develop land use plan to include site plans for ballpark and senior living facility, and bubble diagrams for commercial and multi-family components. Land use plan will include conceptual site plans for commercial and multi-family components.
- ❖ Using Zoning Ordinance as a base, draft development standards and guidelines for Specific Plan document. Development standards and guidelines for the ballpark and senior living facility will be coordinated with the project plans. Development standards and guidelines for the commercial and multi-family components will be generalized, and will focus on high quality development through text and pictorial depictions.
- ❖ Prepare landscape concepts for project entries, roadway hierarchy, multi-family open space areas, open space links, perimeter walls, etc. Exhibits will consist of:
 - Project Entries
 - Street Tree Master Plan
 - Conceptual Landscape Plan
 - Major Highway Streetscape
 - Interior Loop Road Streetscape
 - Local Road Streetscape
 - Cul-de-sac Streetscape
 - Primary Entry Monumentation
 - Secondary Entry Monumentation
 - Ball Park Entry Monumentation
 - Commercial Center Monumentation
 - Commercial Center Parking Lot Sections and Shade Program
 - Conceptual Neighborhood Park Plans
 - Conceptual Open Space/Stormwater Retention Plan
 - Conceptual Pedestrian Link/Trails Plan
 - Conceptual Wall and Fencing Plan
 - Conceptual Wall and Fencing Elevations
 - Project Plant Palettes
 - Streetscape
 - Interior Public Spaces
 - Transitional Areas
 - Residential
 - Project Lighting Exhibit
- ❖ Research and document utilities, drainage and public service information for integration into Specific Plan. Coordination is expected with all service providers.
- ❖ Develop other Specific Plan sections for submittal to team members, including General Plan Consistency, Administration, Implementation and Financing, etc.
- ❖ Submit sections for review and comment by Town staff. Because of the project timelines, both the Specific Plan and the EIR will be submitted as they are completed. In order to stay on schedule, all reviews must be completed by Town staff within one week of submittal.
- ❖ Facilitate final review of draft Specific Plan and make final revisions, resulting in “transmittal draft.”

- ❖ Terra Nova shall prepare the CEQA Initial Study and Notice of Preparation on the project and shall transmit same to the State Clearinghouse and other responsible agencies (list of responsible and trustee agencies to be provided by Town staff).
- ❖ Terra Nova shall prepare for and attend one EIR scoping meeting.
- ❖ Terra Nova shall also prepare appropriate CEQA related Public Notices and other CEQA documentation. Terra Nova shall transmit notices requiring publication to Town staff, and coordinate publication dates.
- ❖ Terra Nova shall coordinate with Town staff in preparation and distribution of SB 18 notices to affected Tribes. Coordination shall include securing list of Tribes from State, drafting of letter, and distribution on Town letterhead. Terra Nova shall coordinate follow up responses as they occur.
- ❖ Terra Nova shall prepare a Water Supply Assessment (WSA) in conformance with SB 610 and the requirements of law and coordinate with Apple Valley Ranchos Water Company in its approval.
- ❖ Terra Nova will prepare an Air Quality analysis in conformance with the standards and requirements of the Mojave Desert Air Quality Management District. Analysis shall include both estimates for construction emissions and for operational emissions, including those associated with traffic. Greenhouse gas analysis shall also be completed for existing and build out conditions.
- ❖ Terra Nova shall complete the draft EIR, evaluating the proposed Specific Plan and three land use alternatives, as well as the General Plan Amendment and Change of Zone. The EIR shall include all mandated sections and analysis. All special studies will be integrated into the EIR document and appended to the Draft EIR in their entirety.
- ❖ Town staff shall review screen check copy of EIR prior to transmittal. Final revisions and transmittal of revised EIR for public comment shall be accomplished by Terra Nova.
- ❖ Terra Nova shall integrate the Mitigation Monitoring/Reporting Program into the EIR document so that the Town has only one document to consult in implementing the Specific Plan.
- ❖ Terra Nova shall prepare responses to comments on the Draft EIR and shall submit same to Town staff for review prior to finalizing responses.
- ❖ Terra Nova will prepare Statement of Overriding Considerations for inclusion in Town Council packets, which is expected to be limited to air quality impacts. The Statement will be submitted to staff for review and comment.
- ❖ Terra Nova and Town staff shall cooperate in the preparation of staff reports and other materials to accompany documents to be provided to Planning Commission and Town Council prior to consideration of the project at respective public hearings.
- ❖ Terra Nova and Town staff shall coordinate the presentation of the Draft Specific Plan and the draft and final EIR, and recommendations at all public hearings before the Planning Commission and Town Council (1 hearing each).

❖ Terra Nova and Town staff shall work cooperatively in the completion of Final EIR documentation and final approved version of the Specific Plan, and provision of print masters and electronic versions of all documents.

Exhibit B
Schedule for
Baseball Stadium Specific Plan & Construction of Minor League Ball Park

week of August 24, 2009	Meeting with Terra Nova & property owners regarding Specific Plan
31-Aug-09	NOP released
week of August 31, 2009	Meeting with Terra Nova & property owners regarding Specific Plan
1-Sep-09	WSA completed and submitted to AVRWC
10-Sep-09	Scoping Meeting
11-Sep-09	Draft SP to Town/Prop. Owners for review and due back to Terra Nova on 9/25/09
14-Sep-09	First sections of EIR to Town for review with a 4-5 day deadline
17-Sep-09	Deadline for review of first sections of EIR
25-Sep-09	Deadline for review of Specific Plan
2-Oct-09	Draft Specific Plan completed
6-Oct-09	Traffic, Air and Noise sections of the EIR to town for review due back on 10/9/09
9-Oct-09	Deadline for review of traffic, air and noise sections of the EIR
14-Oct-09	EIR sent out
15-Oct-09	45-day review period for EIR begins
30-Nov-09	45-day review period for EIR ends
4-Dec-09	Complete response to comments for final EIR
9-Dec-09	Distribute final draft EIR
14-Dec-09	Staff Report completed for Joint meeting
22-Dec-09	Joint meeting with Planning Commission and Town Council

Exhibit C
Terra Nova Planning & Research, Inc.
Proposed Project Budget
Baseball Stadium Specific Plan and EIR

Terra Nova Staff Time	Amount
Client and Internal Meetings	\$ 6,600.00
Project Management	\$ 9,300.00
Field Surveys, Research and Data Collection	\$ 8,800.00
Specific Plan Documentation and Drafting	\$ 40,500.00
Initial Study, Notice of Preparation, NOA, NOD, CEQA Public Notices/Documentation	\$ 9,600.00
Program EIR Documentation and Drafting	\$ 54,000.00
Final EIR Documentation and Drafting	\$ 9,300.00
Findings and Statement of Overriding Considerations	\$ 12,400.00
Staff Reports, Resolutions, Ordinance, etc. for TC & PC	\$ 2,700.00
Public Hearings (1 PC & 1 TC)	\$ 2,480.00
Subtotal	\$ 155,680.00

Special Tasks/Studies

*Includes Terra Nova staff hours and subcontract management, analysis and information breakout, and drafting.

Land Use Planning/Analysis, including three alternatives	\$ 13,500.00
Traffic/Circulation Analysis	\$ 75,100.00
Traffic Control Plan	\$ 9,950.00
Water Supply Assessment	\$ 16,200.00
Air Quality Analysis	\$ 12,800.00
Noise Impact Analysis	\$ 16,700.00
Biological Resource Assessment	\$ 9,700.00
Cultural and Paleontological Resources Assessment	\$ 10,900.00
Site Planning and Landscape Exhibits	\$ 39,050.00
Four Visual Simulations	\$ 16,700.00
Subtotal	\$ 220,600.00

Reimbursables

CAD Drafting and Mapping, Exhibit Preparation	\$ 7,000.00
Miscellaneous Printing ¹	\$ 3,000.00
Editing/Formatting	\$ 5,500.00
Administrative Assistant	\$ 3,200.00
Misc. Office: Postage, telephone, FAX, photocopies, etc. ¹	\$ 4,000.00
SP and Draft & Final EIR Printing ²	\$ 20,000.00

Summary Statement

Page 23

Subtotal **\$ 42,700.00**

Total Project Budget **\$ 418,980.00**

1. Will be billed at cost. This budget figure is an estimate only.
2. Assumes 5 copies each of screen check Specific Plan, and DEIR; 50 copies each of Draft Specific Plan and DEIR; 20 copies of the Response to Comments (Final EIR); 25 copies of the Adopted Specific Plan, and 15 copies of the Certified EIR.