

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AWARD OF CONTRACT FOR PROFESSIONAL SERVICES FOR RECRUITMENT AND SELECTION OF TOWN MANAGER

SUMMARY STATEMENT

On November 13, 2007, the Town Council authorized staff to send out a Request for Proposals (RFP) for professional services for recruitment and selection of the Town Manager position. The RFP requested a statement of qualifications, identification of key personnel assigned to the project, a list of client references, a list of required information needed by the respondent to perform the requested services, an outline of the process to be utilized, along with a timeline in which the recruitment can be expected to proceed and an estimated cost of professional fees and expenses for the project.

A total of four agencies responded to the request. The respondents were invited to be interviewed by the Town Council on Thursday, January 3, 2008. At the conclusion of the interviews, the Town Council made a tentative selection and directed the Town Manager to enter into negotiations. The Council felt that they offered the best services for the cost. In addition, they have extensive experience in recruiting for executive positions for many municipalities.

Recommended Action:

Award Contract to select a firm for Professional Services to provide assistance in recruitment and selection of a Town Manager.

Proposed by: James L. Cox, Town Manager

Item Number _____

T. M. Approval: _____

Budgeted Item Yes No N/A

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 8th day of January 2008, by and between THE TOWN OF APPLE VALLEY, a Municipal Corporation (hereinafter referred to as "TOWN") and _____, (hereinafter referred to as "CONSULTANT").

WHEREAS, Town, desires to retain Consultant for the purpose of recruiting for a permanent Town Manager; and

WHEREAS, Consultant has represented to Town that Consultant has the knowledge, skills, resources and experience that qualify consultant to provide said services for the Town, including related and accompanying studies, reports and all other matters described herein and any attachments hereto, including, but not limited to, the matters described in Request for Proposal and proposal (including but not limited to the Scope of Services), contained in Exhibit "A", attached hereto and incorporated herein by this reference; and

WHEREAS, based upon the representations of Consultant, Town desires to retain the services of Consultant to perform the activities herein described in consideration for payment to Consultant of the fees herein described, contained in Exhibit "A", attached hereto and incorporated herein by this reference and in consideration of the further covenants, conditions and provisions hereinafter set forth.

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

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

2. Payment to Consultant by the Town for the work described in the scope of services shall be billed monthly. The Town will pay Consultant a fee not to exceed a maximum of \$ _____. Payment requested for work not within the scope of this Agreement will not be honored or paid unless such extra work and payment is authorized in writing by the Town Manager, subject to the provisions of Paragraph 6, hereof. Increases or decreases in task requirements, changes in product format or detail, or new task requirements shall be approved in advance in writing by the Town Manager. The Town, through the Town Manager, reserves the right to direct any changes in the order of performance of any of the task requirements referenced or set forth in the proposal and/or scope of services; and where deemed to be in the best interests of the Town, the Town Manager may direct termination of the performance of any task, or any portion thereof; in the event of such termination, Consultant shall be paid only for the work performed prior to the effective date of said termination. The provision in this paragraph shall not be construed to authorize the Town Manager to approve payments for extra work which result in exceeding the total sum authorized by this contract without the prior approval of the Town Council.

3. It is intended that the process of recruiting for a permanent Town Manager will be completed within a period of _____ from the date hereof, unless the Town reasonably determines that a longer period of time will be required. Consultant shall invoice the Town monthly in accordance with a work and payment schedule, approved in advance by the Town Manager. Said monthly invoices shall include the work performed by task, rate, and a task progress status report in a form and with such additional information satisfactory to said Town Manager. Payments to consultant for approved work and accepted submitted products shall not be unreasonably withheld and under no circumstance shall be delayed for work performed beyond 60 days from receipt of invoices without prior notification to Consultant of the reasons for withheld payments.

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

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

6. Consultant shall complete the scope of services so as to allow for completion for the entire project. Consultant acknowledges, and the parties specifically agree that time is of the essence in the performance of the services required to be performed under this Agreement. Consultant will complete the task requirements to meet the schedule referenced in the proposal and/or scope of services and included in Exhibit "A", attached hereto, subject to such schedule alterations by the Town Manager as are permitted herein.

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

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

9. In the event Consultant defaults in the performance of any of the terms of conditions of this Agreement, and said default is not cured within seven days after notice thereof by the Town, then Town at its option, shall have the right to terminate this Agreement, without waiving any other rights it may have against Consultant for damages or other relief as permitted by law.

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

11. This Agreement may be terminated by the Town by seven days written notice for any reason. If this Agreement is terminated by the Town, and provided Consultant is not then in breach, Consultant shall be paid for services performed to the termination notice date.

12. Consultant, and each of its employees, agents, subcontractors and representatives, is and shall act hereunder as an independent contractor, and is not an employee of the Town for any purpose.

13. All notices to be given hereunder shall be in writing and shall be deemed to have been given, if delivered in person, or two days after mailing if properly addressed and mailed, with full postage prepaid, by certified or registered mail with return receipt requested. Notice to the Town shall be sufficient if sent to:

James L. Cox, Town Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Notice to Consultant shall be sufficient if sent to:

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

14. The Town Manager or his representative shall represent the Town in all matters pertaining to the administration of this Agreement, including without limitation, attending all necessary meetings and conferences, and review and approval of all products submitted by Consultant, but not including the authority to enlarge the scope of work or increase the compensation due Consultant; although Consultant shall be responsible for coordination of all necessary meetings and conferences, and will coordinate all public information and participation activities.

15. Consultant shall keep separate books of accounts in connection with the work to be performed under this Agreement. These books shall be subject to audit by the auditor, controller, accountant manager, or other financial officer of the Town or that officer's designate. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records and supporting details shall be retained for a period of at least three years after the expiration of the term or of the termination of this Agreement.

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

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

18. Consultant shall defend (with attorneys approved by Town), hold harmless and indemnify the Town, its officers, employees and agents against liability (whether bodily injury, including death, and/or property damage and/or any other losses, claims, damages, actions or judgments) arising or alleged to arise out of the wrongful or negligent acts or omission of Consultant or its officers, agents, employees, subcontractors or representatives in the performance of this Agreement.

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

The Town shall also be named as an additional insured under said policy or policies of liability insurance, which insurance shall be primary and not contributing with any other liability insurance available to the Town. Consultant and its insurance carrier

shall be required to inform the Town in writing of any change, expiration, cancellation or renewal of any insurance policy or policies within 30 days prior to the effective date thereof, and where applicable, an appropriate rider or addition shall be made to said policy relating thereto acceptable to the Town; and if any insurance required herein is cancelled or reduced in coverage, Consultant shall promptly provide replacement coverage acceptable to the Town.

20. Should any section or any part of this Agreement be rendered void, invalid or unenforceable by any court of law, any such final determination shall not render void, invalid or unenforceable any other sections or portions of this Agreement unless the Town determines in writing that its purpose cannot be accomplished by the remaining provisions not so invalidated.

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

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

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

24. Consultant represents that it has all personnel required in performing the services under this Agreement. All such personnel shall be fully qualified, and, where applicable, shall be licensed or otherwise authorized under State and local law to perform such services.

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

26. Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Consultant shall take appropriate action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for

training, including apprenticeship. Consultant shall comply with all applicable Federal laws and Executive Orders and relevant orders of the Secretary of Labor, with all State and local laws and affirmative action compliance programs and other applicable rules and regulations of all government and administrative agencies relating to any and all performance under this Agreement.

27. This Agreement binds Consultant, and its successors and assigns, although this paragraph shall not be construed as permitting any assignment, subletting or transfer of any interest, rights or obligations of Consultant under this Agreement without the prior written consent of the Town.

28. The Town and Consultant shall act in a reasonable manner to ensure the timely and efficient completion of this Agreement.

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

TOWN OF APPLE VALLEY, CALIFORNIA

BY: _____
Timothy J. Jasper, Mayor

ATTEST:

La Vonda M. Pearson Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Neal Singer, Town Attorney

James L. Cox, Town Manager

CONSULTANT

Exhibit "A"

TOWN OF APPLE VALLEY REQUEST FOR PROPOSAL EXECUTIVE SEARCH FOR TOWN MANAGER

Objective

The Town of Apple Valley, California, is seeking proposals from qualified firms to perform executive search services in regards to the recruitment and selection of a qualified individual for the position of Town Manager.

Scope of Work

The firm is to perform an executive search for the position of Town Manager.

The firm is to utilize their experience and knowledge of executive searches to perform the following:

- A. Translate the Town's needs into a detailed recruiting specification, to encompass a state/nationwide search;
- B. Document procedures to be carried out, including timelines for their accomplishments;
- C. Prepare recruiting materials that present an accurate profile of the position and environment;
- D. Contact potential candidates through written material, advertising and direct recruiting;
- E. Screen and evaluate candidates to establish a qualified semi-final group;
- F. Develop a list of finalist utilizing generally accepted screening practices and procedures, to be detailed in the report;
- G. Research personal, professional and academic qualifications thoroughly and discreetly;
- H. Consolidate the findings of the final candidates in a clear, objective profiles detailing:
 - a. Current situation,
 - b. Past experience,
 - c. Skills and performance that are directly appropriate to the position
- I. Develop and participate in the selection process, to include meetings with the Mayor and Town Council and any citizen advisory committees the Council may appoint;
- J. Prepare a list of final candidates and coordinating interviews with the Town; and
- K. Assist in final negotiations and handle all related correspondence;
- L. Report progress in all phases regularly to the Town Council

Prepare and Submittal Instructions

Official submittal of the proposal shall consist of seven (7) copies of the proposal enclosed in a sealed envelope and sent to the Town of Apple Valley, c/o Jim Cox, 14955 Dale Evans Pkwy, Apple Valley, California, 92307. The deadline for receipt of the proposal is **5:00 p.m., December 6, 2007.** The envelope shall show the notation, "Executive Search for Town Manager" in the lower right hand corner. Only sealed proposals will be accepted. ***Faxed proposals will be rejected.***

The Town is requesting an electronic copy of the proposal be submitted to: Jim Cox, at the e-mail address of jcox@applevalley.org. ***The electronic copy does not meet the conditions of an official proposal.*** The preferred format for the electronic copy is Microsoft Word.

The submitted proposal must be received by Mr. Cox prior to the time and date specified above. The mere fact that the proposal was dispatched will not be considered. The respondent must insure that the proposal is actually delivered. Late proposals will not be considered.

There will be no disclosure of contents to competing firms, and all proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information, which the respondent identifies as proprietary, all proposals will be open for public inspection after the contract is awarded.

Respondents may withdraw their proposal at any time prior to the time specified as the closing time for acceptance of proposals. However, no respondent shall withdraw or cancel his or her proposal for a period of 90 days after closing date for acceptance of proposals.

All cost directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the Town shall be the sole responsibility of and shall be borne by the respondent.

During proposal development, respondent's questions regarding the RFP or the process should be directed to: Jim Cox, 14955 Dale Evans Pkwy, Apple Valley, California, 92307 or call (760) 240-7000, ext. 7051 or via e-mail at jcox@applevalley.org.

The Town of Apple Valley requests that respondents to this Request for Qualifications do not contact the Town staff and/or member of the Town Council during the proposal process and evaluation phase.

Consideration of Proposal

The Town reserves the right to accept or reject any or all proposals, to waive any and all informalities and technicalities, and to accept the offer considered to be in the best interest of the Town of Apple Valley.

The Town reserves the right to reject the proposal of any respondent who previously failed to perform properly or complete on time, agreements of similar nature, or to reject the proposal from any respondent who is not in a position to perform specified requirements contained herein.

Selection Criteria

The contract will be awarded to the respondent who submits a proposal that, in the judgment of the Town of Apple Valley, is best able to produce a quality program for the best price. The past performance of the respondent, as verified by references, will be of important consideration. The successful placement of qualified police chiefs will be significant.

RFP Requirements

RFP's should provide the following:

1. A statement of qualifications, history and experience of the firm.
2. Identification of all key personnel who will be assigned to the project and the specific role of each individual.
3. A brief explanation of the firm's objectives and approach to an executive search.
4. A list of client references, including a brief description of the project, specifically projects involving executive searches for the position of Town Manager.
5. A list of required information needed by the firm to perform the requested services.
6. An outline of the process to be utilized, along with a timeline in which the recruitment can be expected to proceed.

An estimated cost of professional fees and expenses for the project with the actual cost not to exceed ten percent of the total estimated fee.

Scope of Services

Exhibit "B"

INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CO 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1187) covering Automobile liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability.
4. Errors and omissions liability insurance appropriate to the consultant's profession.

Minimum Limits of insurance

Consultant shall maintain limits no less than:

1. General Liability: \$100,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$100,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$100,000 per accident for bodily injury or disease.
4. Errors and omissions liability: \$100,000 per occurrence and \$200,000 annual aggregate.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Town. Except with respect to professional liability coverage, at the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Town, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. 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 officers, officials, employees or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail return receipt requested, has been given to the Town.

Acceptability of insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

Verification of Coverage

Consultant shall furnish the Town with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the Town. All endorsements are to be received and approved by the Town before work commences. As an alternative to the Town's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications, or endorsement/certificates approved by the Town.