



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** October 9, 2012

**From:** Mayor Barb Stanton    **Item No:** 12  
Town of Apple Valley Town Council

**Subject:** LOCAL PREFERENCE AD HOC COMMITTEE REPORT AND FINAL  
RECOMMENDATIONS

**T.M. Approval:** \_\_\_\_\_    **Budgeted Item:**  Yes  No  N/A

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### RECOMMENDED ACTION:

**Move to open the public hearing and take testimony.**

**Close the public hearing. Then:**

1. **Receive** the Local Preference Ad Hoc Committee report and adopt Final Recommendations.
2. **Determine** that, pursuant to Section 20162 of the State of California Public Contract Code and the Federal Office of Management and Budget Circular A-102, it can be determined that the Municipal Code amendment complies with the legal requirement(s) of the Public Contract Code statute and adheres to the federal grant requirements for state and local governments and nonprofit entities.
3. **Find** the facts presented within the staff report support the required Findings for approval of an amendment to the Municipal Code and adopt the Findings.
4. **Find** that the proposed Town Council revision to Chapter 3.12 "Purchases" is consistent with the Goals and Objectives of the adopted Town of Apple Valley General Plan, promotes the local economy of the Town of Apple Valley/Victor Valley region and is necessary in order to update the Town's Purchasing Policy.
5. **Move** to waive the reading of Ordinance 437 in its entirety and read by title only.
6. **Introduce** Ordinance 437, an Ordinance of the Town Council of the Town of Apple Valley, amending Chapter 3.12 "Purchases" of the Town of Apple Valley Municipal Code.

### SUMMARY:

Over the past three months, the Local Preference Ad Hoc Committee performed a comprehensive review of Local Preference issues and a corresponding analysis of the Town's existing Purchasing policy (Chapter 3.12 of the Municipal Code). The Committee also reviewed the Town's current Local Preference geographical area, compared other municipal agencies' Local Preference policies, and reviewed the Town's contract evaluation criteria and the Town's local business program & website portal.

Town Attorney John Brown served as a technical advisor to the Local Preference Ad Hoc Committee and provided the members with a thorough overview of Federal and State law governing Local Preference and a review of the California Public Contracts Code. Also assisting

the Committee as technical advisors were various members of the Town's Executive Staff whom provided the Committee with relevant information on historical and current Town procedures in regards to professional service contracts, goods and supplies purchasing and local business outreach.

At the final Local Preference Ad Hoc Committee meeting held September 27, 2012, the Committee carefully reexamined the information compiled over the course of its review of Local Preference issues and the Town's Purchasing policy and came to a consensus regarding its proposed recommendations for the Town Council.

Therefore, based upon thorough examination and thoughtful deliberation, the Local Preference Ad Hoc Committee respectfully recommends the following courses of action:

- 1) Redefine the Town's Local Preference Region and create a map clearly identifying its boundaries;
- 2) Require that a business's principal place of operation within the Local Preference Region have established a place of business operation within the Local Preference Region for at least six (6) months prior to the publication of the call for proposals or bids that qualify for the Local Preference incentive;
- 3) Require that procurement of a Town business license be required prior to the commencement of any work on any Town project, including purchases;
- 4) Require that placement on the Town's approved vendors list requires a valid Town business license at the time of the request;
- 5) More clearly define the Local Preference incentive amounts as follows:
  - a. A credit equal to five percent (5%) of the total points used to determine the most advantageous bid or response to a request for proposal.
  - b. An additional local preference credit of one percent (1%) of the total points used to determine the most advantageous bid or response to a request for proposal shall be credited to businesses incorporated within the Town of Apple Valley. The additional one percent (1%) credit shall be given based upon the credits for local sales and use taxes accordingly.
- 6) Increase the dollar amount in which bidding may be dispensed with for the Town's procurement of supplies, equipment and services to a total estimated value of less than five thousand dollars (\$5,000);
- 7) Take action via Ordinance to update the Town of Apple Valley Municipal Code Chapter 3.12 "Purchases" with the aforementioned revisions.
- 8) Approve the flyer, "A Guide to Purchases in the Town of Apple Valley & Local Preferences" (Attachment A) for dissemination to local businesses in order to familiarize them with Town purchasing and contract procurement procedures;
- 9) Expand and update the Town's website business portal to include more specific information for doing business "in, with and for" the Town of Apple Valley;
- 10) Develop a "Buy/Shop Local" campaign in partnership with the Apple Valley Chamber of Commerce;
- 11) Encourage contractors working on Town projects to utilize local laborers by including such language in all Town bid documents (not a contract requirement).
- 12) Develop a "Town of Apple Valley Business Directory" for the influx of contractors and subcontractors needing to purchase services and supplies while in Apple Valley working on the upcoming Yucca Loma Bridge project.

## **BACKGROUND:**

Earlier this year, a call was made requesting the development of a more comprehensive Local Preference Policy due to both the complexity of local preference issues and the need to consider additional factors not addressed by the Town's current program. Staff subsequently discussed the matter in detail and found that important issues such as professional services contracts, best quality/best price comparisons, construction/capital projects, fiduciary responsibility, procedure for the selection of most qualified, perception of favoritism/bias, consideration of additional costs to the Town, sales tax benefits, etc., had not been addressed at that point. After careful consideration, staff determined that examination of these issues would best be conducted by an Ad Hoc Committee.

Subsequently, at the June 12, 2012 Council meeting, Town Manager Frank Robinson presented a staff report to the Town Council recommending that the Council appoint an Ad Hoc Committee for the purpose of performing a review of the relevant local preference issues and an analysis of the Town's current Local Preference program. The report expressed the need for the Committee to take into consideration the importance of establishing a Local Preference Policy which not only ensured the Town's ability to procure quality products/services but also provided an opportunity for the Town to promote local businesses and benefit from enhanced economic activity by reinvesting dollars into the local economy.

It was the consensus of the Town Council to appoint Mayor Barb Stanton, Mayor Pro Tem Ginger Coleman, two staff members and the Apple Valley Chamber of Commerce CEO to an Ad Hoc Committee. The first Local Preference Ad Hoc Committee meeting commenced on July 11, 2012. Subsequent to Mayor Pro Tem Ginger Coleman's resignation from the Town Council on July 26, 2012, Councilmember Scott Nassif was appointed to the vacant seat on the Committee.

**FISCAL IMPACT:** Indeterminable.

**ORDINANCE NO. 437**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING TITLE 3, "REVENUE AND FINANCE CODE", CHAPTER 3.12 "PURCHASES", OF THE TOWN OF APPLE VALLEY MUNICIPAL CODE.**

**WHEREAS**, on June 12, 2012, the Town Council of the Town of Apple Valley appointed five (5) members to a Local Preference Ad Hoc Committee to review the Town's current Local Preference Policy and Purchasing Policy and provide recommendations to the Town Council based upon its findings; and

**WHEREAS**, an amendment was duly noticed in the Daily Press, a newspaper of general circulation within the Town of Apple Valley; and

**WHEREAS**, based upon the federal grants requirement for state and local governments, it can be seen with a certainty that the Municipal Code Amendment will not be in conflict with California Public Contract Code §20162; and

**WHEREAS**, the amendment is consistent with Title 3 (Revenue and Finance Code) of the Municipal Code of the Town of Apple Valley; and

**SECTION 1.** Title 3, Chapter 3.12 "Purchases" of the Town Municipal Code is hereby amended to read as follows:

**Chapter 3.12**

**PURCHASES**

**Sections:**

- 3.12.010 Adoption and objectives of purchasing system.**
- 3.12.020 Creation of purchasing division.**
- 3.12.030 Purchasing agent.**
- 3.12.040 Compliance with purchasing regulations.**
- 3.12.050 Encumbrance of Funds**
- 3.12.100 Inspection and testing.**
- 3.12.110 Bidding.**
- 3.12.120 Formal (sealed) bid procedures.**
- 3.12.130 Notice inviting formal bids.**
- 3.12.140 Published notice for formal bids.**
- 3.12.150 Solicitation of formal bids from approved vendors list.**
- 3.12.160 Bulletin board notice of pending purchases.**
- 3.12.170 Bidder's security.**
- 3.12.175 Bond requirements.**
- 3.12.180 Formal bid opening procedure.**
- 3.12.190 Rejection of formal bids.**
- 3.12.200 Award of formal bid contracts.**
- 3.12.210 Resolving tie formal bids.**
- 3.12.212 Credit for local sales and use taxes.**
- 3.12.215 No formal bids.**

- 3.12.230 Open market or informal bid procedures.**
- 3.12.240 Minimum number of informal bids.**
- 3.12.250 Notice inviting informal bids.**
- 3.12.260 Record of informal bids.**
- 3.12.270 Exceptions to bidding procedures.**
- 3.12.280 Regulation re selection of contract services.**
- 3.12.300 Surplus supplies and equipment.**
- 3.12.310 Surplus supplies--Trade ins.**
- 3.12.320 Surplus supplies--Sale.**

**3.12.010 Adoption and objectives of purchasing system.** A purchasing system is adopted in furtherance of the following Town objectives: to establish efficient procedures for the purchase of supplies and equipment at the lowest possible cost proportionate to the quality needed; to exercise positive financial control over purchases; to clearly define the Town's purchasing procedures, bidding procedures exceptions, and the local preference credit for local businesses as defined herein; to establish the responsibilities of Town officials in the purchasing process; and to assure the acceptable quality of Town purchases. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.020 Creation of purchasing division.** A purchasing division is hereby created. This division shall have the authority to purchase the supplies and equipment required by the Town. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.030 Purchasing agent.** The purchasing agent shall be the Town Manager or the Town Manager's designee. The purchasing agent shall have the authority to:

(1) Issue purchase orders for or contract for supplies and equipment required by any Town agency in accordance with: the purchasing procedures and regulations prescribed in this Chapter; the administrative procedures and regulations adopted by the purchasing agent for the internal management and operation of the purchasing division; and the other rules and regulations as shall be prescribed by the Town Council or the Town Manager;

(2) Negotiate contract terms and recommend the execution of contracts for the purchase of supplies and equipment for the Town and its agencies;

(3) Procure for the Town and its agencies, at the least expense, the quantity and quality of supplies and equipment required, including any local preference credits as prescribed in this Chapter;

(4) Encourage full and open competition on all purchases, including the provisions of notices and the solicitation and consideration of formal and informal bids;

(5) Prepare and recommend to the Town Council general rules governing the purchase of supplies and equipment and specific findings with respect to the award of individual bid contracts, including credits for local sales and use tax as provided in this Chapter;

(6) Prepare and recommend revisions and amendments to the Town's purchasing rules;

(7) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;

(8) Prescribe, collect and maintain such forms and records as are reasonably necessary for the operation of this Chapter;

(9) In his or her discretion, supervise the inspection of all supplies and equipment purchased to determine their conformance with the specifications set forth in the Town's purchase orders;

(10) Recommend the transfer or disposal of surplus or unused supplies and equipment between Town agencies and departments or to third parties as needed;

(11) Maintain an updated approved vendors list and all other records needed for the efficient operation of the purchasing division and of this Chapter; and

(12) Subject to the limitations and requirements of Section 3.12.170, determine if formal bids shall be accompanied by security and ensure that such requirement is designated in the notice inviting bids. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.040 Compliance with purchasing regulations.** The purchasing agent shall be responsible for ensuring compliance with the regulations and procedures in Section 3.12.050 through 3.12.110 of this Chapter. **(Amended per Ordinance 311 dated 4-25-06)**

**3.12.050 Required availability of funds for purchases.** Except in cases of emergency, the purchasing agent shall only issue a purchase order for supplies, equipment or services if an amount of money exists in the fund account against which such purchase is to be charged to fully pay for such purchase order. **(Amended per Ordinance 349 adopted 6/26/07)**

**3.12.100 Inspection and testing.** The purchasing agent shall, in his or her discretion, inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the Town's purchase orders. The purchasing agent shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications set forth in the purchase orders.

**3.12.110 Bidding.** Purchases of supplies and equipment shall be in accordance with the bid procedures outlined in Sections 3.12.120 through 3.12.260 of this Chapter. Bidding may be dispensed with only under conditions stated in Section 3.12.270.

**3.12.120 Formal (sealed) bid procedures.** Except as otherwise provided in this Chapter, public projects, as defined in Section 20161 of the California Public Contract Code, and purchases of supplies and equipment of an estimated value greater than fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible bidder in compliance with the formal bid procedures prescribed in this Chapter. **(Section Amended per Ordinance 224 6-13-00) (Amended per Ordinance 349 adopted 6/26/07).**

**3.12.130 Notice inviting formal bids.** Notices inviting formal bids shall: include a general description of the supplies, equipment or services desired; state where bid documents and specifications may be obtained; and contain the time and place for opening formal bids.

**3.12.140 Published notice for formal bids.** Notices inviting formal bids shall be published at least ten (10) days prior to the date of opening of the formal bids. Notices shall be published at least once for non-public projects and at least twice, not less than five days apart for public projects (as defined in Section 3.12.120 of this Chapter), in a newspaper of general circulation in the Town.

**3.12.150 Solicitation of formal bids from approved vendors list.** The purchasing agent shall also solicit formal bids from responsible suppliers whose names are on the Town's approved vendors list, or who have made written request that their names be added to the approved vendors list. Placement on the Town's approved vendors list requires a valid Town business license, as prescribed in Chapter 5.02, at the time of the placement request.

**3.12.160 Bulletin board notice of pending purchases.** The purchasing agent shall advertise the pending purchases by posting a notice on the public bulletin board at the Town offices.

**3.12.170 Bidder's security.** When a public project is involved, and in other cases when deemed necessary by the purchasing agent, formal bids shall be accompanied by security, either cash, cashier's check, certified check or surety bond, in a sum equal to ten percent (10%) of the total bid, and notice that such security is required shall be designated in the notice inviting bids. Bidders shall be entitled to the return of their bid security; provided, however, that a successful bidder shall forfeit his bid security upon his refusal or failure to execute the contract within ten (10) days after the notice of award of contract has been deposited in the mail to the successful bidder, unless the Town is solely responsible for the delay or failure to execute the contract. The Town Council may, upon the successful bidder's refusal or failure to execute the contract, award the contract to the next lowest responsible bidder who is willing to execute the contract, or the Town may reject all bids and re-advertise the contract for bidding according to the procedures of this Chapter.

**3.12.175 Bond requirements.** A faithful performance bond and a labor and material bond, in amounts reasonably necessary to protect the best interests of the Town, shall be required for all public projects, unless waived by the Town Council. In addition, the Town Council shall have authority to require a faithful performance bond, labor and material bond, or other bonds before entering into a contract other than a public project contract. If bonds are required, the forms, types and amounts thereof shall be designated in the notice inviting bids.

**3.12.180 Formal bid opening procedure.** In response to formal bids, responsive sealed bids shall be submitted to the purchasing agent and shall be identified as "bids" on the sealed envelope containing the responsive bid. The purchasing agent, or his or her designee, shall publicly open all bids at the time and place stated in the public notices for the formal bids. A tabulation of all responsive bids received shall be available for public inspection in the purchasing office during the office's regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

**3.12.190 Rejection of formal bids.** In its discretion, the Town Council may reject any and all bids received and may cause the re-advertising for bids according to the bid procedures outlined in this Chapter. However, when all bids received exceed the authorized budgeted amount for the project by the Town or when no formal bids or responsive bids are received, the Town Manager may authorize rejection of all bids and authorize re-bidding based upon the original bid specifications or as they may be modified, in accordance with procedures of this Chapter.

**3.12.200 Award of formal bid contracts.** Except as otherwise provided herein, formal bid contracts shall be awarded by the Town Council to the lowest responsible bidder whose bid complies with the procedures outlined in this Chapter. The determination of "lowest responsible bidder" shall be at the discretion of the Town Council pursuant to any findings and recommendations presented to the Town Council by the purchasing agent at the time of award of formal bid contract. Procurement of a Town business license, as prescribed in Chapter 5.02 of this Code, is required prior to the commencement of any work on any project for the Town, including those described in this Section.

**3.12.210 Resolving tie formal bids.** If two or more formal bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the Town Council may, in its discretion, either accept one of the tie bids that it chooses or, as a result of negotiation with the tie bidders, accept the lowest bid made by either of the tie bidders at the time of the bid opening or the lowest bid made by either of the tie bidders at the time of the award of the contract.

**3.12.212 Credit for local sales and use taxes.** In determining which responsible bidder is the lowest bidder, the purchasing agent, in his or her findings and recommendations to the Town Council, shall deduct from the total dollar amount of each responsive bid, the amount of local sales and use tax revenues which would be paid to the Town on account of that portion of the bid amount which is directly subject to the imposition of such sales and use taxes. **(Ord. 112, 10-27-92)**

**3.12.215 No formal bids.** When no formal bids or no responsive bids are received, the purchasing agent, or his or her designee, is authorized to negotiate for written proposals, and his or her recommendation shall be presented to the Town Manager. The award of the contract, if any, shall be made in accordance with this Chapter.

**3.12.230 Open market or informal bid procedures.** Purchases of supplies and equipment of an estimated value of fifty thousand dollars (\$50,000) or less may be made by the purchasing agent in the open market pursuant to the procedures prescribed in Sections 3.12.240 through 3.12.260 and these purchases need not comply with the procedures prescribed in Sections 3.12.120 through 3.12.215. Local preference credit may be given to providers of these supplies and equipment as prescribed for in Section 3.12.290. All bidding may be dispensed with for purchases of supplies and equipment having a total estimated value of less than five thousand dollars (\$5,000). Procurement of a Town business license, as prescribed in Chapter 5.02 of this Code, is required prior to the commencement of any work on any project for the Town, including the purchases described in this Section. **(Amended per Ordinance 349 adopted 6/26/07; Amended per Ordinance 409 dated 6-8-10; Amended per Ordinance 426 dated 12-13-11).**

**3.12.240 Minimum number of informal bids.** Open market purchases shall, wherever possible, be based on the purchasing agent's consideration of at least three informal bids, and shall be awarded to the bidder offering the most advantageous bid to the Town after consideration of price, quality, durability, servicing, delivery time, standardization, and other factors determined by the purchasing agent.

**3.12.250 Notice inviting informal bids.** The purchasing agent shall solicit informal bids by written requests to prospective vendors, or by telephone, or by public notice posted on a public bulletin board at the Town offices.

**3.12.260 Record of informal bids.** The purchasing agent shall keep a written record of all open market purchases and informal bids for a period of one year. This record, while so kept, shall be open to public inspection.

**3.12.270 Exceptions to bidding procedures.** Notwithstanding any provision of this Chapter to the contrary, the formal and informal bidding procedures and requirements may be dispensed with in any of the following instances:

(1) When the estimated contract amount involved is less than five thousand dollars (\$5,000);

(2) When the supplies, equipment or services can reasonably be obtained from only one vendor;

(3) The Town Manager may authorize the purchase of materials, supplies, equipment and services in an emergency situation when it is determined that service impacting the public health, safety or welfare would be interrupted if the normal purchasing procedures were followed. All emergency purchases, which would otherwise require formal bidding procedures, made pursuant to this sub-section shall be submitted to the Town Council for ratification at the next regular Council meeting after the purchase is authorized;

(4) The Town Council may authorize the execution of contracts for personal services, professional services, consultant services, contractual services, and for other, non public projects without observing the bidding procedures provided herein where the amount of the contract exceeds the value of fifty thousand dollars (\$50,000);

(5) The Town Manager may authorize entering into contracts for personal services, professional services, consultant services, contractual services and for other, non public projects without observing the bidding procedures provided herein where the amount of the contract does not exceed the value of fifty thousand dollars (\$50,000) and the contract falls within the guidelines for local preference credit as specified under Section 3.12.290;

(6) When the contract involves the acquisition of supplies, equipment or services entered into with another governmental entity;

(7) The Town Council may authorize the execution of a lease or leases for office space for the Town government without observing the bidding procedures provided herein irrespective of the term of the lease or leases or the amount of rent and other charges to be paid by the Town under the lease or leases;

(8) The Town Manager is authorized to enter into licensing contracts or annual support contracts for previously approved purchases of capital assets where the amount of the contract does not exceed fifty thousand dollars (\$50,000); provided there exists an amount of money in the fund account against which such contract is to be charged to fully pay for such contract;

(9) Assistant Town Managers or Directors are authorized to enter into licensing contracts or annual support contracts for previously approved purchases of capital assets where the amount of the contract does not exceed ten thousand dollars (\$10,000); provided there exists an amount of money in the fund account against which such contract is to be charged to fully pay for such contract;

(10) Without further contracting, solicitation, or formal bidding as described in this Chapter, the Town Council may authorize, or may authorize the Town Manager to allow, the Town's Finance Director or the purchasing agent to contract for the purchase of supplies, equipment or services with other governmental jurisdictions or public agencies who are making or have made the same such purchases through legal, competitively awarded contracts in effect at the time of the Town's entrance into that same contract (commonly referred to as 'piggybacking'). **(Section Amended by Ordinance 246 10-23-2001; Amended Ord. 409 dated 6-8-10; Section (5) Amended by Ordinance 426 dated 12-13-11).**

**3.12.280 Regulation regarding selection of contract services.** The Town Council shall by resolution prescribe the procedures, rules and regulations governing the solicitation, selection and award of proposals or bids for the furnishing of personal services, professional services, consultant services, or other contractual services. Such contracts may be awarded without observing the bidding procedures provided for in this Chapter. The purpose of such procedures, rules and regulations shall be to obtain the highest quality contractual services at the most cost effective price.

**3.12.290 Regulation regarding local preference.** The local preference classification will apply only to the procurement of supplies, equipment and services not involving public works projects of more than five thousand dollars (\$5,000). The local preference classification shall not apply to the procurement of goods and services for public works projects that exceed five thousand dollars (\$5,000) as outlined under state law (Public Contract Code, § 20162) or to any project assisted in whole or in part with federal funds.

1. The local preference classification applies to bids received from businesses that maintain their principal place of operation within the Local Preference Region. Bids received from businesses within this classification will be given a local preference credit.
  - (a) As it applies to this section, maintaining a business's principal place of operation within the Local Preference Region requires a business to have established a place of business operation within the Local Preference Region for at least six (6) months prior to the publication of the call for proposals or bids that qualify under the local preference guidelines set forth in this section.
  - (b) As it applies to this section, the "Local Preference Region" includes the municipalities contained within the geographical area depicted on the Local Preference Regional Map (Exhibit A), and is defined as the general vicinity of the areas bounded from Wrightwood communities on the southwest to Kramer Junction on the northwest to Newberry Springs on the northeast and including the communities within the San Bernardino Mountains National Forest along the south and southeast.
2. The local preference credit shall be a credit equal to five percent (5%) of the total points used to determine the most advantageous bid or response to a request for proposal. An additional local preference credit of one percent (1%) of the total points used to determine the most advantageous bid or response to a request for proposal shall be credited to businesses incorporated within the Town of Apple Valley. This additional one percent credit shall be given based upon the credits for local sales and use taxes as outlined in section 3.12.212. **(Section 3.12.290 added per Ordinance 426, dated 12-13-11).**

**3.12.300 Surplus supplies and equipment.** All Town agencies or departments shall submit to the purchasing agent, at such times and in such forms as he or she shall prescribe, reports showing all supplies and equipment which are no longer being used or which have become obsolete, worn out, or unfit for future use.

**3.12.310 Surplus supplies--Trade ins.** In return for new equipment and supplies, the purchasing agent shall have authority to exchange or trade in the equipment and supplies identified in the reports prescribed in Section 3.12.300.

**3.12.320 Surplus supplies--Sale.** After receiving bids or proposals which, in his or her judgment provide the maximum return to the Town, the purchasing agent shall also have authority, subject to approval of the Town Manager, to auction off, sell or otherwise dispose of any surplus supplies or equipment. **(Chapter 3.12 Ord. 3, 11-28-88)**

**SECTION 2. Invalidation.** The amendment by this Ordinance of the Title 3 "Revenue and Finance Code" of the Town of Apple Valley Municipal Code as previously in effect, or of any other prior enactment, shall not be construed to invalidate any entitlement exercised or proceeding taken pursuant to such Title or other enactment while the same was in effect.

**SECTION 3. Notice of Adoption.** The Town Clerk of the Town of Apple Valley shall certify to the adoption of this ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

**SECTION 4. Effective Date.** This Ordinance shall become effective thirty (30) days after the date of its adoption.

**SECTION 5. Severability.** If any provision of this Ordinance, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications and, to this end, the provisions of this Ordinance are declared to be severable.

**APPROVED** and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 23rd day of October, 2012.

\_\_\_\_\_  
Barb Stanton, Mayor

ATTEST:

\_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

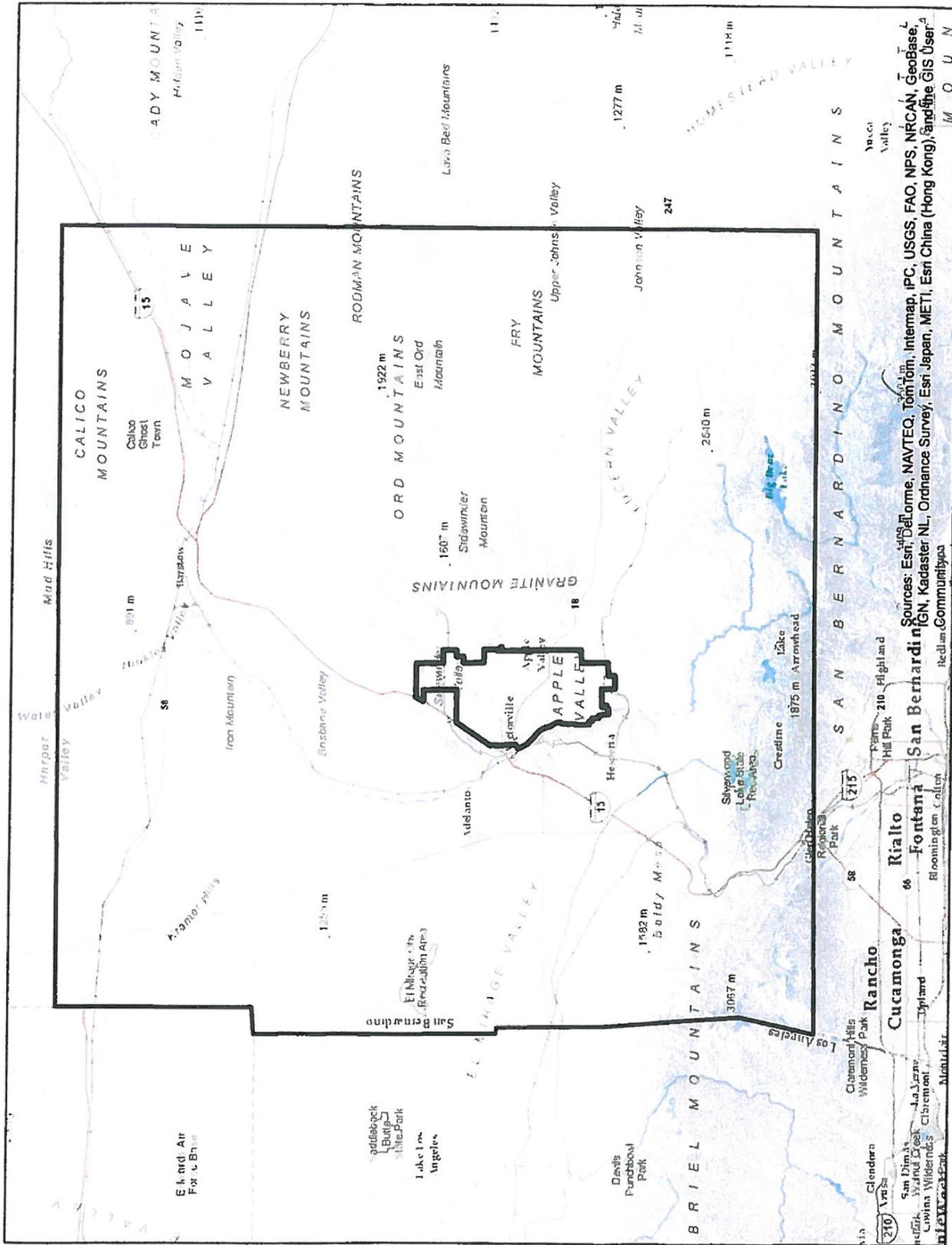
APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
John Brown, Town Attorney

\_\_\_\_\_  
Frank Robinson, Town Manager

EXHIBIT "A"



Sources: Esri, DeLorme, NAVTEQ, TomTom, Intermap, iPC, USGS, FAO, NPS, NRCAN, GeoBase, Swisstopo, Esri Japan, Esri China (Hong Kong), and the GIS User Community

## **ATTACHMENT A**

### **A Guide to Purchases in the Town of Apple Valley & Local Preferences**

#### **Town of Apple Valley Municipal Code Chapter 3.12**

##### **GOALS OF THE TOWN PURCHASING SYSTEM:**

The Town adopted a purchasing system to foster the following Town goals:

- To establish efficient procedures for the purchase of high quality supplies and equipment (“Purchases”) at the lowest cost;
- To exercise of positive financial control over Purchases;
- To provide clear authority for the Town’s function as a purchaser; and
- To assure the high quality of Purchases.

##### **TOWN’S PURCHASING AGENT RESPONSIBILITIES:**

Purchases are made by the Town’s purchasing agent, who shall be the Town Manager or the Town Manager’s designee and shall have the authority to:

- Purchase or enter into contracts for Purchases for the Town’s various agencies at the lowest expense;
- Ensure there are available funds for Purchases prior to contracting for their purchase (unless there is an emergency);
- Follow all Town guidelines for such Purchases, including preparing, revising and recommending rules governing Town Purchases and recommendations to the Council on the lowest bidder (including Local Preference credits);
- Negotiate contract terms on the Town’s behalf and recommend contracts and terms to the Town;
- Encourage full and open competition on sellers submitting bids to the Town for Purchases;
- Remain informed about current developments in the field of purchasing, prices, market conditions, and products;
- Prepare all forms reasonably necessary to effect his or her duties;
- Supervise the inspection and, if needed, the testing of all Purchases received by the Town to ensure high quality and conformance with the order placed for the Purchases;
- Recommend the transfer of excess Purchases between Town departments as needed;
- Maintain an approved vendors list and other necessary purchasing files and records for the Town; and
- Exchange, trade in, or sell (with the Town Manager’s approval) goods which can no longer be used by any Town department or which have become unsuitable for Town use.

##### **BIDDING PROCEDURES FOR “PUBLIC PROJECTS”<sup>1</sup> & PROJECTS OVER FIFTY THOUSAND DOLLARS**

###### **Notices**

- The Town will publish notices inviting formal bids at least ten days prior to the date of opening bids;
- These notices will include a general description of the services desired, where and when responsive bid documents shall be delivered, and the time and place when the bids will be opened;
- The Purchasing Agent will also solicit formal sealed bids from responsible suppliers whose names are either: on the approved vendors list or who have made a written request for their names to be added to the list. To be added to the approved vendors list, suppliers must have a valid Town business license.

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<sup>1</sup> The term “public project” is defined in California Public Contract Code section 20161.

## **Pending Purchases**

- The Purchasing Agent will advertise all pending formal Purchases by posting a public notice on the public bulletin board at the Town offices;

## **The Submittal, Rejection, Acceptance, and Re-Advertising of Bids**

- For public projects, and when determined by the Purchasing Agent, formal bids must include, as security, an amount of ten percent (10%) of the total bid. This security will be returned to all bidders, but the security of the successful bidder is forfeited if that bidder refuses or fails to execute the contract within ten days after the Notice of Award of contract is mailed (unless the Town is solely responsible for this failure). In this case, the Town Council may award the contract to the next lowest responsible bidder or may reject all bids and re-advertise.
- For public projects, and all other projects designated by the Town, a faithful performance bond and labor and material bond shall be required unless waived by the Town. Bid notices will state this amount.
- Bids must be identified as “Bids” on the envelope and must be submitted to the Purchasing Agent to be opened at the time and place stated in the notice. After opening, a list of all bids received is available for public inspection for thirty days.
- The Town may reject any and all bids and re-advertise for bids at its discretion.
- Formal bid contracts will be awarded by the Town Council to the lowest responsible bidder, pursuant to the findings and recommendations of the Purchasing Agent. Ties for lowest responsible bidder may be resolved by the Town Council if re-advertising for the bids is against the public interest. A Town business license is required prior to the commencement of work on a given contract.
- When no responsive bids are received, the Purchasing Agent can negotiate for written proposals and present his or her recommendation to the Town Manager for awarding the contract.

## **BIDDING PROCEDURES FOR PROJECTS FIFTY THOUSAND DOLLARS AND BELOW**

- In general, these Purchases may be made by the Purchasing Agent in the open market, with consideration for Local Preference as outlined below. The Purchasing Agent will solicit informal bids by written requests to prospective vendors, by telephone, or by public notice posted on the Town bulletin board.
- The Purchasing Agent will keep a record of all open market purchases and informal bids for a period of one year. This record is open to public inspection.
- When possible, open market purchases will be awarded:
  - Based on the receipt of at least three informal bids; and
  - To the bidder offering the most advantageous bid to the Town based on price, quality, durability, servicing, delivery time, standardization, and other factors.

## **BIDDING PROCEDURE EXCEPTIONS**

Exceptions to the enumerated bidding procedures include:

- When the estimated contract amount is less than five thousand dollars (\$5,000);
- When the Purchase can only be obtained from one vendor;
- When the Town Manager authorizes the Purchases where an emergency is deemed to exist and service involving the public health, safety, or welfare would be interrupted if the normal procedures were followed;
- When the Town Council, in its discretion, authorizes the execution of contracts for personal services, professional/consultant services, and for other non-public projects for amounts over \$50,000 (within the procedures and rules established by the Town);
- When the Town Manager, in his discretion, authorizes the execution of contracts for personal services, professional/consultant services, and for other non-public projects for contracts with amounts less than \$50,000 and in accordance with allowable Local Preferences outlined below;
- When an agreement for Purchases is entered into with another governmental entity;
- When the Town Council authorizes the executions of a lease for office space for Town government;
- When the Town Manager authorizes agreements for licensing or annual support contracts for previously approved purchases in an amount of \$50,000 or less and there exists appropriate funds

for same;

- When the Assistant Town Managers or Directors authorize agreements for licensing or annual support contracts for previously approved purchases in an amount of \$10,000 or less and there exists appropriate funds for same; and
- If the Town Council determines it to be advantageous to the Town, when the Town Finance Director or Purchasing Agent to make the Purchases through legally competitively awarded contracts by other governmental or public agencies (commonly known as piggybacking).

### **LOCAL PREFERENCE**

Local Preference Credit:

- Is given to businesses with their principal place of business operation in the Local Preference Region for at least six (6) months prior to the publication of the call for bids. This Local Preference Region includes the municipalities contained within the geographical area depicted by the borders of the map found in Section 3.12.290(1)(b) of the Town Municipal Code, a copy of which is on file with the Town Clerk.
- Is in an amount equal to 5% of the total points used to determine the most advantageous bid or proposal. For businesses incorporated in the Town of Apple Valley, an additional 1% credit is given.

Limitations on the Local Preference classification include:

- The Local Preference classification will only apply to the procurement of Purchases and services not involving public works projects and the procurement of Purchases and services of more than five thousand dollars (\$5,000).
- The Local Preference classification shall not apply to the procurement of goods and services for public works projects as outlined under state law<sup>2</sup> or to any project assisted in whole or part by federal funds.

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<sup>2</sup> See California Public Contract Code section 20162.