



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

**To:** Honorable Mayor and Town Council      **Date:** August 26, 2014

**From:** Orlando Acevedo      **Item No:** 4  
Economic Development Manager  
Economic Development Department

**Subject:** AGREEMENT FOR BUSINESS RETENTION SERVICES WITH  
APPLE VALLEY CHAMBER OF COMMERCE

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

### RECOMMENDED ACTION:

Approve an annual Agreement for Business Retention Services between the Town and the Apple Valley Chamber of Commerce (“Chamber”) in an amount not-to-exceed \$19,800.00.

### SUMMARY:

The Town and the Chamber have entered into multiple agreements over the years to partner in the coordination and implementation of business retention, development and assistance programs and services (“Projects”). Notwithstanding limited resources, the partnership has effectively helped foster three-way communication between the Town, Chamber and the local business community.

In order to continue advancing this partnership and effort, the Chamber and Town staff have again identified and prioritized the most critically needed Projects. The proposed Agreement (“Attachment 1”) reflects a mutually agreed upon Scope and Cost of Services (“Exhibit A”). The Scope of Services includes five Projects encompassing previously successful services while cultivating newly unveiled ones as well:

1. Business Visitation Program: Generate Appointments and Coordinate with Town
2. Shop Local Program: Assist Town with Implementation and Promotion
3. Business Development Workshops: Coordinate and Host Industry-Relevant Courses
4. State of the Town Event: Partner with Town in Annual Message and Update
5. Business Retention Services: Feature Chamber and Town Resources and Services

The Town Council is requested to approve the new FY2014-15 Agreement in the amount of \$19,800.00.

**BACKGROUND:**

The latest Agreement, a nine-month term from October 1, 2013, through June 30, 2014, was recently completed for an amount of \$21,600.00 and included the following assigned projects:

1. Conducted grand opening celebrations
2. Hosted a recognition event for top sales tax producers
3. Hosted the State of the Town luncheon
4. Marketed a "business start up guide"
5. Researched shop local programs and launched a seasonal campaign
6. Conducted computer skills training workshops and webinars
7. Conducted job preparation and job skills training workshop
8. Conducted a radio and social media campaign and more

**FISCAL IMPACT**

The Town Council approved funding for this public/private partnership in the FY 2014-15 Budget. The cost for all approved services is \$19,800.00.

**Attachment 1**  
**AGREEMENT FOR BUSINESS RETENTION SERVICES**

**TOWN OF APPLE VALLEY**  
**BUSINESS RETENTION SERVICES AGREEMENT**

**PARTIES AND DATE.**

This Agreement is made and entered into this 26th day of August, 2014, 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 the Apple Valley Chamber of Commerce, a non-profit corporation with its principal place of business at 16010 Apple Valley Road, Apple Valley, CA, 92307 (“Chamber”). Town and Chamber are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. RECITALS.**

**2.1 Chamber.**

Chamber 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. Chamber represents that it is experienced in providing business retention services and is familiar with the plans of Town.

**2.2 Project.**

Town desires to engage Chamber to render such services for the FY2014-15 Business Retention Services project (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Chamber 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 business retention 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 September 1, 2014, to June 30, 2015, unless earlier terminated as provided herein. Chamber 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 Chamber.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Chamber or under its supervision. Chamber will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Town retains Chamber on an independent contractor basis and not as an employee. Chamber 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 Chamber shall also not be employees of Town and shall at all times be under Chamber's exclusive direction and control. Chamber 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. Chamber 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. Chamber shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Chamber represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Chamber's conformance with the Schedule, Town shall respond to Chamber's submittals in a timely manner. Upon request of Town, Chamber 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 Chamber shall be subject to the approval of Town.

3.2.4 Substitution of Key Personnel. Chamber 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, Chamber may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Chamber 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 Chamber at the request of the Town. The key personnel for performance of this Agreement are as follows: Janice Moore, CEO/President

3.2.5 Town's Representative. The Town hereby designates Orlando Acevedo, Economic Development Manager, 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. Chamber shall not accept direction or orders from any person other than the Town's Representative or his or her designee.

3.2.6 Chamber's Representative. Chamber hereby designates Chamber Chairperson, or designee, to act as its representative for the performance of this Agreement ("Chamber's Representative"). Chamber's Representative shall have full authority to represent and act on behalf of the Chamber for all purposes under this Agreement. The Chamber'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. Chamber 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. Chamber 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. Chamber represents and maintains that it is skilled in the professional calling necessary to perform the Services. Chamber warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Chamber 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, Chamber 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 Chamber's failure to comply with the standard of care provided for herein. Any employee of the Chamber 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 Chamber and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Chamber 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. Chamber shall be liable for all violations of such laws and regulations in connection with Services. If the Chamber performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Town, Chamber shall be solely responsible for all costs arising therefrom. Chamber 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, Chamber 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. Chamber 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. Chamber 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, Chamber 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. Chamber 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 Chamber,

its agents, representatives, employees or subconsultants. Chamber 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. Chamber 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. Chamber shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Chamber 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 Chamber, 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 Chamber'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 Chamber'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 Chamber or for which the Chamber 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 Chamber'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 Chamber's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Chamber.

(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 Insured; 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. Chamber 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 Chamber 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. Chamber 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. Chamber shall report to the Town, in addition to Chamber's insurer, any and all insurance claims submitted by Chamber in connection with the Services under this Agreement.

3.2.11 Safety. Chamber shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Chamber 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. Chamber shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Chamber 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. Chamber 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. Chamber shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed Nineteen Thousand Eight Hundred Dollars (\$19,800) without written approval of Town Manager. 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. Chamber shall submit to Town a monthly itemized statement which indicates work completed and hours of Services rendered by Chamber. 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. Chamber 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 Chamber 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. Chamber shall not perform, nor be compensated for, Extra Work without written authorization from Town's Representative.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. Town may, by written notice to Chamber, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Chamber of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Chamber shall be compensated only for those Services which have been adequately rendered to Town, and Chamber shall be entitled to no further compensation. Chamber may not terminate this Agreement except for cause.

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

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

### **3.5 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 Chamber 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 Chamber on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Chamber 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 Chamber is entitled under the termination provisions of this Agreement, Chamber shall provide all Documents & Data to Town upon payment of the undisputed amount. Chamber shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Chamber 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, Chamber shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

3.5.2 Subconsultants. Chamber 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. Chamber represents and warrants that Chamber has the legal right to license any and all Documents & Data. Chamber makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Chamber or its subconsultants, or those provided to Chamber 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 Chamber 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 Chamber's seal from the Documents & Data and indemnify and hold harmless Chamber 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. Chamber 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. Chamber shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Chamber, a party for whom the Chamber is legally responsible or liable, or anyone approved by the Chamber.

3.5.4 Indemnification. Chamber 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 Chamber in connection with the performance of this Agreement, shall be held confidential by Chamber. All Documents & Data shall not, without the prior written consent of Town, be used or reproduced by Chamber for any purposes other than the performance of the Services. Chamber 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 Chamber that is otherwise known to Chamber or is generally known, or has become known, to the related industry shall be deemed confidential. Chamber shall not use Town's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

### **3.6 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:

**Chamber:**

Apple Valley Chamber of Commerce  
Janice Moore, CEO/President  
16010 Apple Valley Road  
Apple Valley, CA 92307

**Town:**

Town of Apple Valley  
Economic Development Office  
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, Chamber 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 Chamber, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Chamber'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 Chamber'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 Chamber.

3.6.2.2 Additional Indemnity Obligations. Chamber shall defend, with Counsel of Town's choosing and at Chamber'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. Chamber 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. Chamber 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. Chamber 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. Chamber'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. Chamber 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 Chamber include all personnel, employees, agents, and subconsultants of Chamber, 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. Chamber warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Chamber, to solicit or secure this Agreement. Further, Chamber 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 Chamber, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. 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. Chamber 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**

**APPLE VALLEY CHAMBER OF COMMERCE**

By: \_\_\_\_\_  
Frank Robinson  
Town Manager

By: \_\_\_\_\_  
Janice Moore  
CEO/President

***ATTEST:***

By: \_\_\_\_\_  
Ms. La Vonda M. Pearson  
Town Clerk

**APPROVED AS TO CONTENT:**

By: \_\_\_\_\_  
Frank Robinson  
Town Manager

**APPROVED AS TO FORM:**

BEST BEST & KRIEGER LLP

By: \_\_\_\_\_  
John Brown  
Town Attorney

**EXHIBIT "A"**  
**SCOPE AND COST OF SERVICES**

July 1, 2014

Mr. Frank Robinson, Town Manager  
Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

## **Proposal for Apple Valley Business Retention Services**

September 1, 2014 – June 30, 2015

**Four Core Chamber Competencies:** The Apple Valley Chamber of Commerce embraces the opportunity to serve our Town with our commitment to Four Core Competencies:

- Create A Strong Local Economy
- Promote the Community
- Provide Business Building Opportunities
- Represent the Interests of Business to Government

## **SCOPE OF SERVICES**

The Chamber will partner with the Town to assist with development and promotion of the following projects during Fiscal Year 2014-15.

### **Project 1: Business Visitation Program**

#### **Purpose and Outcome**

Support and assist the Town's newly unveiled Business Visitation Program to make face-to-face introductions to existing businesses, survey their issues and offer business development and workforce training resources.

#### **Proposed Activities**

- Visit/meet/tour a minimum of four Apple Valley businesses per month
- Representatives of Town, Chamber, County and State invited to attend
- Focus first on industry sectors ripe for growth including industrial, professional, medical and educational/government /public services
- Gather survey data and report key talking points
- Promote Town and Chamber news, encourage sponsorship and membership opportunities

### **Project 2: Shop Local Program**

Council Meeting Date:

**Purpose and Outcome**

Partner with Town to develop, launch and implement a multi-faceted Shop Apple Valley Program to cultivate a community-oriented loyalty among public agencies, retailers and citizens to look first to Apple Valley when shopping, dining or purchasing goods and services.

**Proposed Activities**

- Brand and promote initiative through news, collateral material, window clings, social media, radio and other outlets
- Arrange for mixers in local retail businesses
- Discuss a mobile Apple Valley smart phone app branding the Chamber and the Town
- Customize a Shop Local gift card program branding the Chamber and the Town

**Project 3: Business Development Classes**

**Purpose and Outcome**

Assess needs and interests of business community and offer convenient, low-cost training opportunities in tools and skills needed to be successful. Facilitate conversations to increase opportunities for local businesses to be competitive in offering good and services to the public consumer, public agencies and large companies.

**Proposed Activities**

- Coordinate and host four educational/training sessions open to public
- Business-education, skill-training and industry-relevant topics
- May include AV Ranchos Water; Town; AV Fire; VVWRA; AVUSD; San Bernardino County, hospitals; VVC; utility companies; commercial real estate leasing agent; insurance agents; other large companies
- Choose topics; identify instructors; event promotion

Proposed schedule is subject to change based on community level of interest/participation:

Summer 2014:	Understanding the Town’s sign code
November 2014:	Besting the health care mandate
January 2015:	Multi-pronged marketing: social media, email and print
March 2015:	Doing business with the public agencies/utility companies
May 2015:	Benefits to opening your business in a store front

**Project 4: State of the Town Event**

**Purpose and Outcome**

Assist in preparation and delivery of annual Mayor’s message.

**Proposed Activities**

- Work with Town staff in arrangement and planning
- Promote event attendance to public and Chamber members

**Project 5: Promote Chamber Brand and Resources**

**Purpose and Outcome**

Feature Chamber resources and Town programs to local businesses and regional audiences

**Proposed Activities**

- Exhibit and/or attendance at local business events, as necessary, including at regional job fairs, SBA Days, High Desert Opportunity, High Desert Business Journal, etc.
- Maintain Yucca Loma Bridge website including an online Apple Valley-wide Business Directory
- Host Job Preparation Workshop for regional job fair(s)
- Promote and distribute Small Business Start Up Guide
- Host regular meetings with Town staff
- Provide quarterly update to Town Council

**COST OF SERVICES**

**Chamber Hourly Rate**

\$120.00 per hour utilizing in-house talent

**Project Number and Cost**

1. \$5,400 (45 hours)
2. \$5,400 (45 hours)
3. \$5,400 (45 hours)
4. \$1,800 (15 hours)
5. \$1,800 (15 hours)

**Total Proposed Cost**

\$19,800, 165 hours

**Direct Costs**

Any third party costs will be billed directly and must be approved by the Town prior to commencement of work.

We thank you for the opportunity to serve the Town of Apple Valley.

Sincerely,

Janice Moore  
CEO/President