

**TOWN OF APPLE VALLEY
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this 12th day of September, 2023, 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 Kimely-Horn and Associates, Inc., a Corporation, with its principal place of business at 660 South Figueroa Street, Suite 2050, Los Angeles, CA 90017 ("Consultant"). Town and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the Town on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing landscape and irrigation design services to public clients, is licensed in the State of California, and is familiar with the plans of Town.

2.2 Project.

Town desires to engage Consultant to render such professional services for the Parks Irrigation Systems project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Town all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional irrigation design consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from September 12, 2023 to September 12, 2025, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Fees and Payments

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth

in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Hundred Ninety-Five Thousand Dollars (\$195,000.00)** without written approval of the Town Council or Town Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

3.3 Responsibilities of Consultant.

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

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

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

3.3.4 Substitution of Key Personnel. Consultant has represented to Town that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Town. In the event that Town and Consultant cannot agree as to the substitution of key personnel, Town shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Gary Lai, Michael Ledbetter, Paul Reed, and Jacob Ovadia.

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

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

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

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

any of the Services or to work on the Project.

3.3.9 Period of Performance.

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

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

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

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

3.3.10 Laws and Regulations; Employee/Labor Certification. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the Town to terminate the Agreement for cause.

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

3.3.10.2 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of Town's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

3.3.10.4 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

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

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

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

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

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

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

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

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

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

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Town except ten (10) days shall be allowed for non-payment of premium. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

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

insurer waives all rights of subrogation against the Town, its officials, officers, employees, agents, and volunteers.

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

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

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the Town and shall protect the Town, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

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

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

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

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

3.3.11.11 Additional Insurance Provisions

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

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

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

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

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

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

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

the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the Town.

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

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Town shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

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

shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

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

3.5 Accounting Records.

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

3.6 General Provisions.

3.6.1 Termination of Agreement.

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

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

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

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

Consultant:	Kimley-Horn and Associates, Inc.
	660 South Figueroa Street
	Los Angeles, CA 90017
	ATTN: Gary Lai, Principal-In-Charge

Town: Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, California 92307
ATTN: Guy Eisenbrey, Director of Municipal Services

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

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Town to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of Town, and shall not be used in whole or in substantial part by Consultant on other projects without the Town's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to Town reproducible copies of all Documents & Data, in a form and amount required by Town. Town reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by Town at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to Town upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to Town any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to Town upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify Town and provide Town with the opportunity to obtain the documents.

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

3.6.3.3 Right to Use. Town shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at Town's sole risk. If Town uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of

the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the Town upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

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

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Town, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Town's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Town.

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

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

3.6.5 Indemnification.

3.6.5.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of Town's choosing), indemnify and hold the Town, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the Town. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the Town, its officials, officers, employees, agents, or volunteers.

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

3.6.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

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

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

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

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

3.6.11 Assignment; Subcontracting. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TOWN OF APPLE VALLEY
AND KIMLEY-HORN AND ASSOCIATES, INC.**

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

TOWN OF APPLE VALLEY

KIMLEY-HORN AND ASSOCIATES, INC.

By: _____
Doug Robertson
Town Manager

By: _____
Its: _____

ATTEST:

Printed Name: _____

By: _____
La Vonda M-Pearson
Director of Government Services/Town
Clerk

By: _____
Its: _____

Printed Name: _____

APPROVED AS TO FORM:

By: _____
Thomas A. Rice, Best Best & Krieger,
LLP
Town Attorney

EXHIBIT "A"
SCOPE OF SERVICES

Kimley-Horn will provide the following services for each independent task.

Task 1: Surveying and Base Mapping

Kimley-Horn will lead a kick-off meeting with the Client to review and establish the project goals and objectives.

Kimley-Horn will then perform a site visit and coordinate with the Town and the project survey team, Calvada Surveying and Util Locate, to obtain base information and document existing conditions.

Survey will be limited to the identifying water, gas, electric, communications, sewer and storm drain utility lines excluding irrigation. Spot elevations will be taken on all surface utilities, utility paint marks, and at the edges of grass/turf fields.

Trees over six (6) feet in height will also be located regardless of caliper. Flow line invert elevations and sizes of drain inlets, sanitary sewer and storm drain manholes within the site will also be collect unless bolted down or full of debris.

Subtask 1.1: Project Kick-off Meeting – A project kick-off meeting will take place either at the site or via video conference to discuss goals of the design effort and review site specific features and potential constraints. Design parameters, such as the preference for the make and model of any anticipated new materials required, their potential location, the general maintenance practices anticipated, and the site's water window will also be discussed. A complete list of stakeholders and review agencies will be prepared based on the discussion at this meeting.

Subtask 1.2: Survey – Kimley-Horn will work with the survey team to identify the location of existing utilities, tap locations, surrounding roadways, buildings, site access points, and other site features. Existing tree identification will also be recorded.

Subtask 1.3: Initial Site Visit – A site visit will be conducted by the design team to review above-ground conditions, observe site constraints, and to develop a general understanding of the proposed development and contextual conditions. The following are observations the team will strive to record:

- The flow capacity/gallons per minute (GPM) at the potable point-of-connection, and the flow/capacity at the reclaimed water point-of-connection
- The existing meter/meters size(s)
- The available water pressure for both the potable system, and the reclaimed lines (if applicable)
- Potential locations and power sources for any pump stations that might be needed.
- Elevation changes from high to low point on-site

It is Kimley-Horn's strong belief that a successful project involves working closely with the maintenance team. Our design team will connect with the maintenance staff during the site visit to understand their approach to managing the irrigation system and will work to incorporate approaches to the project retrofit that the maintenance team can seamlessly support.

Task 2: Utility Research and Coordination

Kimley-Horn will research the location and status of relevant utilities on the James Woody Park and Brewster Park

sites using publicly available information. Calvada and Util Locate, the survey team, will locate and identify underground utilities. Kimley-Horn will coordinate all tasks with the Town as well as the anticipated governing agencies of Liberty Utilities and Golden State Water, Apple Valley Choice Agency, the Victor Valley Wastewater Reclamation Authority, and other stakeholders identified at the Project Kick-off Meeting and the initial site visit. Kimley-Horn will document interactions with governing agencies and invite the Town to participate on coordination calls as well as copying the designated Town representative on all written correspondence including email.

Kimley-Horn will provide due diligence for all publicly documented data, but field work, including potholing, is not included in this proposal since specific tasks cannot be determined at this time. If Kimley-Horn and the Town agree that field potholing or overhead clearance confirmation is required, a separate scope will be submitted to the Town for approval.

Task 3: Conceptual Design Phase

Kimley-Horn will provide an initial concept plan and 65% PS&E plans with an initial Engineer's Opinion of Costs.

Subtask 3.1: Initial Concept – Kimley-Horn will prepare a preliminary reclaimed irrigation retrofit plan which depicts the locations and connections of all recommended elements. Elements will be shown schematically, but a site meeting will be scheduled with the project team to walk the property so that any irrigation line routing can be installed as conceptually drawn. All proposed enhancements will be compliant with local codes and agency requirements, and account for the State of California Model Water Efficient Landscape Ordinance (MWELO). *This initial concept plan will be presented to the Town staff via video conference.*

Kimley-Horn will provide one (1) round of revisions based on consolidated regulatory agency and Town comments. Additional revisions may be provided as additional services.

Subtask 3.2: 65% Level Irrigation PS&E Phase – Upon written approval from the Town on the Initial Concept, Kimley-Horn will prepare construction plans and documents for submittal to the Town. The PS&E plans will be prepared for submittal to the Town and any stakeholders identified during Tasks 1 and 2. Any major revisions to the site limits or grading and drainage after the start of construction documents would be considered an additional service.

Kimley-Horn will provide the following plan sheets or data during the PS&E Phase:

- a. **Cover Sheet and General Notes:** Depicting information schedules and general notes
- b. **Irrigation Plan and Details:** Kimley-Horn will review the available water pressure and capacity information and prepare an Irrigation Plan indicating point-of-connection and mainline routing. Point of connection and mainline sizing will be reflective of the available water window during the month with the highest Reference Evapotranspiration Rate of the year in the Apple Valley area (July). The plans will portray proposed system components such as booster pumps, backflow preventers, and sleeving. The plans will include irrigation details, notes, and calculations. The irrigation design will meet the specifications set forth in the State's Model Water Efficient Landscape Ordinance (MWELO). Details related to the Point of Connection, and the mainline construction and specification will be included so that it can be reviewed prior to final construction document preparation.
- c. **Specifications:** Preparation of specifications in a format provided by the Town. These will be included on the plans unless otherwise directed by the Town.

- d. **Preliminary Project Schedule:** A preliminary project schedule will be developed and provided as part of the project deliverables. The schedule will include a list of all anticipated review agencies, the anticipated review times for each, and potential opportunities for concurrent reviews where possible.
- e. **Project Phasing Plan:** A project phasing plan will be developed specific to the site with the intent of avoiding, or at least minimizing, any disruption to the functioning of the existing irrigation systems and use of the fields.
- f. **Project Management and QC/QA:** Kimley-Horn will perform project management and quality review of the PS&E phase plans and documents.
- g. **Engineer's Opinion of Project Costs at the 65% PS&E phase:** 65% level PS&E's will be provided to the Town in PDF format. Kimley-Horn will provide one (1) round of revisions based on consolidated regulatory agency and Client comments. Additional revisions may be provided as additional services. Hard copies of the final Construction Documents will be provided to Client for bidding and implementation.

Task 4: Final Design

KIMLEY-HORN WILL PROVIDE A FINAL IRRIGATION PS&E CONSISTING OF THE FINAL DESIGN ELEMENTS AND CALCULATIONS FOR THE PURPOSES OF PERMITTING AND BIDDING THE PROJECT.

Kimley-Horn will provide the following plan sheets or data during the PS&E Phase:

- a. **Cover Sheet and General Notes:** Depicting information schedules and general notes
- b. **Legend and Calculation sheets:** Depicting materials legends, water usage and conservation calculations, pressure loss calculations, and water schedules
- c. **Finalized Irrigation Plan and Details:** In addition to the information listed above in Task 3, the final irrigation plans will depict equipment downstream from the Point of Connection including the location and sizes of heads, lateral line and sizes, quick coupler valves, isolation valves, pressure compensating equipment (if necessary), flow sensors, weather sensors, automatic control valves, and other necessary equipment. In addition, the plans will show the controller location, recommended station designations, and other equipment necessary for controlling the irrigation system.
- d. **Finalized Specifications:** Preparation of specifications in a format provided by the Town. These will be included on the plans unless otherwise directed by the Town.
- e. **Finalized Project Phasing:** The final phasing will be depicted as part of the final irrigation plan.
- f. **Project Management and QC/QA:** Kimley-Horn will perform project management and quality review of the PS&E phase plans and documents.
- g. **Final Updated Engineer's Opinion of Project Costs from the 65% PS&E**

100% level PS&E's will be provided to the Town in PDF format. Kimley-Horn will provide one (1) round of revisions based on consolidated regulatory agency and Client comments. Additional revisions may be provided as additional services. Hard copies of the final Construction Documents will be provided to Client for bidding and implementation. Additional permitting submittals not identified in Tasks 1 and 2 will be considered an additional service.

Task 5: GIS Design Criteria

Kimley-Horn will adhere the electronic files to the Town's Geographical Information System standards where appropriate to this scope of work. We will coordinate with the Town during the design process for compatibility to the best of our knowledge using existing systems and technologies available to the team.

Task 6: Product Delivery Assurance

Kimley-Horn will provide limited construction phase services for the landscape architecture portion of the project, as directed by the Town. The scope of services listed below will be provided as part of the construction phase services. The budgeted fees for this task are based upon approximately eighty-three (83) hours of effort for a principal-in-charge or project manager and one hundred thirty-eight (138) hours for the production and analyst staff. Any additional effort beyond the specified amount will be billed to the Town hourly, according to the current Kimley-Horn rates, as authorized by the Town or its representatives.

Kimley-Horn will provide the following construction phase services:

Subtask 6.1: Bid Assistance – Kimley-Horn staff will be available during the bidding process to answer telephone or email questions and Requests for Information/Clarifications up to eight (8) hours for a project manager and up to ten (10) hours for a production or analyst staff member.

Subtask 6.2: Pre-bid Meeting – Kimley-Horn's project manager will be available to attend the pre-bid meeting if requested by the Town. We assume the meeting will be in person and on-site and up to two (2) hours long.

Subtask 6.3: Weekly PDT Meetings – Kimley-Horn assumes the weekly PDT meeting will be a maximum of fifty-two

(52) weeks for a twelve (12) month construction schedule. Kimley-Horn assumes that we will be required to attend up to four (4) in person meetings with the rest over video conference call. If the construction schedule is extended beyond the twelve (12) month period, additional meetings would be an additional service.

Subtask 6.4: Construction Support – Kimley-Horn will support the Town with the services listed below during the project construction. Total hours allocated for this subtask is thirty-four (34) hours for a project manager and fifty-three (53) hours for a production or analyst in total for any combination of services listed below. Additional hours beyond this allocation will be an additional service.

- a. **Request for Information (RFI):** Kimley-Horn will respond to Contractor requests for information and issue clarifications and interpretations of the Contract Documents to the Client within this fee. Any authorization of variations from the Contract Documents will be made by the Client. Additional RFI requests will be considered additional services.
- b. **Submittals and Shop Drawing Review:** Kimley-Horn will review material submittals and material cut sheets Shop Drawings, Samples, and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents.
- c. **Change Orders:** Kimley-Horn may recommend Change Orders to the Town and will review and make recommendations related to Change Orders submitted or proposed by the Contractor. Substitutes and "or-equal": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by

Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

- d. **Site Visits:** Kimley-Horn will visit the site to observe construction of improvements designed by Kimley-Horn. Visits will be periodic, and observations will not be exhaustive or extend to every aspect of Contractor's work in progress. Kimley-Horn shall not, during such visits or as a result of such observations supervise, direct, control, influence, or have responsibility over Contractor's work. Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents or permits. This task includes up to three (3) field visits and site observation by Kimley-Horn staff, and one (1) punch walk visits.
- e. **Disagreements between Town and Contractor:** Kimley-Horn will, if requested by Town, render written decision on claims of Town and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Kimley-Horn shall be fair and not show partiality to Town or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- f. **Applications for Payment:** Based on its observations and on review of applications for payment and accompanying supporting documentation, Kimley-Horn will determine the amounts that Kimley-Horn recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Kimley-Horn's representation to Town, based on such observations and review, that, to the best of Kimley-Horn's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Kimley-Horn's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests.

By recommending any payment, Kimley-Horn shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Kimley-Horn in this Agreement. It will also not impose responsibility on Kimley-Horn to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Town free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Town and Contractor that might affect the amount that should be paid.

Subtask 6.5: As-Built Drawings – Kimley-Horn will produce a set of As-built drawings from a set of redlined field notes from the Contractor and incorporating any change orders or bulletins generated during the construction phase. Kimley-Horn will update the 100% PS&E with the as-built information. If the Contractor fails to deliver redlined field notes and all RFI, shop drawings and change orders to the Town and Kimley-Horn in the time allotted per contract, the as-built drawings will be delayed until all necessary information is obtained.

Product Guarantee and Limitation of Responsibilities

Overall, Kimley-Horn will 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 and consistent with the terms stated in the sample contract from the Town.

For the construction phase for this project, Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of its subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Kimley-Horn shall not have the authority or responsibility to stop the work of any Contractor. Kimley-Horn is not responsible for any duties assigned to the design professional in any construction contract that are not expressly provided for in this Agreement.

Assumptions/Exclusions

Any services not specifically provided for in the above scope as well as any changes in scope made at the Town's request, will be considered additional services, and will be performed at our then current hourly rates. This will require approval in writing before any work shall continue. Additional services Kimley-Horn can provide include, but are not limited to, the following:

- Grading and Drainage Plans
- SWPPP
- The information used in the preparation of this proposal was provided by the Client. Kimley-Horn shall be entitled to rely on the completeness and accuracy of all information provided by the client.
- » Hours noted for tasks are estimates only. If more time is required for the scope of work, additional budget will be requested.
- » This proposal assumes that the standards and practices in effect at the Town of Apple Valley, at the time of this proposal, will remain in effect throughout the course of development
- » Meetings beyond those identified in this Scope and Fee Proposal
- Supplemental Exhibits or 3D modeling/imagery
- Formal Value Engineering Process and/or Value Engineering
- Public Improvement Plans, Offsite improvements
- Submittal and/or Permitting Fees
- Environmental, Bio-Assay and/or Geotechnical Services
- Existing Plant Inventory or Landscape Preservation Plans
- Site and/or Landscape Lighting
- Warranty and/or Maintenance Administration
- A soils consultant and soil analysis will be coordinated/prepared by the contractor upon the completion of mass grading. The existing soil nutrient information will be compared against the proposed plant palette to determine the appropriate amendment recommendations.

EXHIBIT "B"
SCHEDULE OF SERVICES

9/14: Kick off
10/5: Survey and base map complete
10/16: Initial Design Concept ready for Town review
10/31: Town review complete
12/13: 65% PS&E ready for Town review
1/8/24: Town review complete
2/5/24: 100% PS&E
2/19/24: Town Review complete
3/4/24: Final revisions complete, bid packet ready for bid, bid announced
4/1/24: Bids due
4/10/24: Contractor selected
5/1/24: Estimated Construction start. Estimated 12 month Construction period

EXHIBIT "C"

COMPENSATION

Following is a fee summary for the services described above. Kimley-Horn will perform the services described in Task 1 - 6, for an agreed-upon total lump sum for labor fees. By prior request of the Client, meetings and coordination effort for each task is included as a lump sum fee based on hourly assumption of effort. If additional effort is required, Kimley-Horn will request additional fee prior to proceeding.

Direct reimbursable expenses such as express delivery services, printing costs, fees, air travel, lodging and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1: Surveying and Base Mapping	\$ 9,000
Task 2: Utility Research and Coordination	\$ 11,800
Task 3: Concept Design	\$ 49,500
Task 4: Final Design	\$ 33,600
Task 5: GIS Design Criteria	\$ 5,500
Task 6: Product Delivery Assurance	\$ 45,000
SUBTOTAL KIMLEY HORN LUMP SUM FEES	\$ 154,400
Calvada	\$ 23,100
Util Locate	\$ 15,000
Other Direct Expenses	\$ 2,500
TOTAL LUMP SUM FEES	\$ 195,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred.

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee equal to five percent (5%), will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a ten percent (10%) markup, will be immediately issued to and paid by the Client. Payment will be due within 25 days of Client's receipt of invoices.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.