

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
CITY OF CATHEDRAL CITY
AND
CITY OF DESERT HOT SPRINGS
FOR PUBLIC SAFETY DISPATCHING SERVICES**

THIS AGREEMENT ("Agreement"), is made and entered by and between the City of Cathedral City, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as "Cathedral City," and the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as "Desert Hot Springs," effective as of January 1, 2015 ("Effective Date"), with Cathedral City and Desert Hot Springs together sometimes referred to herein as the "Parties," and sometimes singularly referred to herein as "Party," with respect to the following:

RECITALS:

WHEREAS, Cathedral City desires to support and enhance community safety by continuing to provide dispatching services to Desert Hot Springs, and as more particularly described in the "Scope of Services," attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, Desert Hot Springs desires continued assistance with dispatching services, including but not limited to dispatching, records retention and monitoring of dispatching services; and

WHEREAS, each party to this Agreement desires to improve the provision of dispatch services and to enhance the public health, safety, and welfare of its residents; and

WHEREAS, in light of the above, Desert Hot Springs desires to retain Cathedral City to render dispatching services.

Now therefore, in consideration of the covenants, conditions and promises contained herein, the parties agree as follows:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

Section 2. TERM

This Agreement shall become effective upon the Effective Date, and shall last for a period of forty-two (42) months, expiring on July 1, 2018, unless said Agreement is

otherwise extended in writing by both Parties or otherwise terminated by either Party pursuant to this Agreement prior to said expiration date or unless a Regional Dispatching system commences dispatch operations under the Eastern Riverside County Interoperable Communications Authority ("ERICA") and Cathedral City ceases operating dispatch services from its own dispatch center. The date of such cessation shall hereinafter be referred to as the "Cessation Date." This Agreement shall automatically terminate without notice at 5 pm on the Cessation Date, and Cathedral City shall not be required to perform any further dispatching services under this Agreement.

Section 3. SCOPE OF SERVICES

Cathedral City shall provide to Desert Hot Springs those services as set forth in the "Scope of Services," and Desert Hot Springs shall agree to render payment to Cathedral City.

Section 4. COMPENSATION

a. Reoccurring Costs: Desert Hot Springs agrees to pay Cathedral City for and in consideration of the performance of the dispatching services and duties set forth in this Agreement, and Cathedral City agrees to accept from Desert Hot Springs, compensation for the performance of said services and duties, at an initial rate of One Million Fifty Nine Thousand Dollars (\$1,059,000), per year. This rate shall increase by nine percent (9%) on July 1, 2016, to One Million One Hundred Fifty Four Thousand Three Hundred Ten Dollars (\$1,154,310). On July 1, 2017, this rate will increase by six point one percent (6.1%), to One Million Two Hundred Twenty Four Thousand Seven Hundred Twenty Three Dollars (\$1,224,723). The annual amounts set forth in this provision shall be referred to herein as the "Reoccurring Costs." Desert Hot Springs agrees to pay to Cathedral City the Reoccurring Costs, regardless of how many actual employees Cathedral City has during a specific year.

b. Fully Burdened Rate: The Parties acknowledge that the fully burdened rate incurred by Cathedral City to provide dispatch services to Desert Hot Springs for fiscal year 2014/2015 is One Million Ninety Two Thousand Six Hundred Dollars (\$1,092,600), for fiscal year 2015/2016 is One Million One Hundred Thirty Nine Thousand Four Hundred Dollars (\$1,139,400), for fiscal year 2016/2017 is One Million One Hundred Eight Four Thousand Four Hundred Dollars (\$1,184,400), and for fiscal year 2017/2018 is One Million Two Hundred Thirty Six Thousand Six Hundred Dollars (\$1,236,600) (the "Fully Burdened Rate").

c. Increase of Reoccurring Costs Upon Failure to Timely Remit Invoice: If any quarterly invoice submitted by Cathedral City to Desert Hot Springs is not fully paid within thirty (30) days of receipt as provided in Section 5(a) below, the initial Reoccurring Cost rate listed shall automatically be increased to the Fully Burdened Rate applicable for the given fiscal year for the quarter invoiced and not paid within 30 days of receipt. The next quarterly invoice will be invoiced as Reoccurring Costs and will only increase if the invoice is not paid within 30 days.

d. Reimbursable Expenses: Desert Hot Springs shall reimburse Cathedral City for any reimbursable expenses, including but not limited to utility bills, software, hardware, installation of equipment and other expenses associated with the performance of this Agreement (“Reimbursable Expenses”). Prior to Cathedral City expending any such Reimbursable Expenses, Desert Hot Springs shall be notified and given the opportunity to review and authorize the expenditure, which authorization shall not be unreasonably withheld. In certain emergency situations, it may be necessary for Cathedral City to expend Reimbursable Expenses prior to receiving authorization from Desert Hot Springs. In such an event, Cathedral City shall notify the liaison person Desert Hot Springs identifies as having the authority to authorize expenditures, and, if such expenditure made by Cathedral City is in fact reasonable given the nature of the emergency, as determined by Desert Hot Springs in its discretion not to be unreasonably withheld, Desert Hot Springs shall authorize reimbursement for those expenses.. All Reimbursable Expenses shall be paid in addition to any Reoccurring Costs.

Section 5. METHOD OF PAYMENT

a. Cathedral City will submit quarterly billings to Desert Hot Springs describing the work performed and described in the Scope of Services during the preceding quarter. Cathedral City’s bills shall include a description of any Reimbursable Expenses, including but not limited to utility bills, software, hardware, installation of equipment and other expenses associated with the performance of this Agreement. Desert Hot Springs shall pay Cathedral City no later than (30) days after receipt of the quarterly invoice.

b. Cathedral City shall submit invoices under this Agreement to:

Accounts Payable – Police Department
City of Desert Hot Springs
65-950 Pearson Drive
Desert Hot Springs, California 92240

Section 6. EXTRA WORK

At any time during the term of this Agreement, Desert Hot Springs may request that Cathedral City perform Extra Work. As used herein, “Extra Work” means any work which is determined by Cathedral City to be necessary for the proper execution of the dispatching services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Cathedral City shall not perform, nor be compensated for, Extra Work, without written authorization from Desert Hot Springs.

Section 7. TERMINATION

a. Regional Dispatching System: Cathedral City intends to be a participant in the Regional Dispatching system under ERICA. In the event the Regional Dispatching system should commence dispatch operations prior to the expiration of this Agreement and should Cathedral City cease operating dispatch services from its own dispatch center, this Agreement shall automatically terminate as of 5 pm on the Cessation Date.

b. Termination by Either Party: This Agreement may be terminated on one (1) year's written notice by either party. However, in no event will this Agreement continue, and Cathedral City will not be required to provide any services under this Agreement after 5 pm of the Cessation Date.

Section 8. DEFAULT

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the injured party shall be entitled to terminate this Agreement and seek any appropriate remedy or damages by initiating legal proceedings.

e. Neither party shall be held responsible for any failure to perform if such failure is as a result of any Act of God, fire, flood, earthquake, storm or other natural disaster, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.

Section 9. KEEPING OF DOCUMENTS

a. Records shall be kept in a manner set forth in the agreement titled "Multi-Agency Cooperative Agreement for Integration of Computer Aided Dispatch/Record Management and Mobile Data Communication Systems."

b. Any records or documents either created by or provided to Desert Hot Springs in connection with the performance of this Agreement shall be kept in the ordinary course of business by Desert Hot Springs.

Section 10. CATHEDRAL CITY'S BOOKS AND RECORDS

Cathedral City shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to Desert Hot Springs for a minimum period of four years from the date of final payment to Cathedral City pursuant to this Agreement, as required by the Desert Hot Springs records retention schedule.

Section 11. REQUEST FOR DOCUMENTS FROM A NON-PARTY

a. In the event of any request for documents from a non-party to this Agreement, such as a Public Records Request, submitted directly to Desert Hot Springs, Desert Hot Springs shall be solely responsible for responding to said request. Should Desert Hot Springs require assistance from Cathedral City, Cathedral City shall use its best efforts to provide reasonable assistance to assist Desert Hot Springs in responding to said request. Such assistance shall not be unreasonably withheld. Desert Hot Springs shall have an obligation to assist itself in acquiring the requested documentation.

b. In no event shall Cathedral City be responsible or liable to either the requestor or to Desert Hot Springs for Cathedral City's failure to use best efforts toward providing reasonable assistance to assist Desert Hot Springs in a public records request, or because of any inability of Cathedral City to gather such documentation needed to respond to any request, after using its best efforts to provide reasonable assistance as set forth in this Section 11.

Section 12. INDEPENDENT CONTRACTOR'S STATUS

Cathedral City shall at all times during the term of this Agreement remain, as to Desert Hot Springs, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor. Neither Desert Hot Springs nor any of its agents shall have control over the conduct of Cathedral City or any of Cathedral City's employees, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed or represented by Cathedral City or Desert Hot Springs or by any third person to create the relationship of principal and agent.

Section 13. REPRESENTATIONS AND ACKNOWLEDGMENTS REGARDING INDEPENDENT CONTRACTOR'S STATUS

a. Cathedral City represents and acknowledges the following:

1. Performance of the services described in this Agreement does not have to be integrated into the daily business operations of Desert Hot Springs.

2. Nothing in this Agreement shall be interpreted to imply that Cathedral City must maintain any contractual relationship with Desert Hot Springs on a continuing basis after termination of this Agreement.

3. Desert Hot Springs will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Cathedral City to perform the services described in this Agreement.

4. Cathedral City shall not at any time or in any manner represent that it or any of its officers, employees, or agents are “employees” of Desert Hot Springs.

b. Desert Hot Springs represents and acknowledges the following:

1. Cathedral City is not required to comply with daily instructions from Desert Hot Springs staff with respect to when, where or how Cathedral City must perform the services set forth in this Agreement.

2. Cathedral City is solely responsible for determining who, under the supervision or direction of Cathedral City, will perform the services set forth in this Agreement.

3. Desert Hot Springs will not hire, supervise or pay any assistants working for Cathedral City pursuant to this Agreement.

4. Nothing in this Agreement shall be interpreted to imply that Cathedral City must maintain any contractual relationship with Desert Hot Springs on a continuing basis after termination of this Agreement.

5. It is the sole responsibility of Cathedral City to set the hours in which Cathedral City performs or plans to perform the services set forth in this Agreement.

6. Cathedral City is not required to perform the services set forth in the Agreement in any particular order or sequence.

Section 14. COMPLIANCE WITH LAWS

Both Parties shall comply with all local, state and federal laws and regulations applicable to the services required hereunder.

Section 15. NONDISCRIMINATION

a. Cathedral City shall comply with its own employment related nondiscrimination policies as set forth in the Cathedral City Municipal Code, as it may be amended from time to time.

b. Desert Hot Springs and Cathedral City acknowledge that Cathedral City’s employment related nondiscrimination policies prohibit discrimination on the basis of an individual’s sex, marital status, race, color, religion, ancestry, national origin, physical handicap, sexual orientation, and domestic partner status.

Section 16. INDEMNIFICATION

a. Desert Hot Springs shall defend, indemnify and hold harmless Cathedral City and its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of the performance of this Agreement, except for any such claim arising out of the negligence or willful misconduct of Cathedral City or its officers, agents, employees or volunteers.

b. Cathedral City shall defend, indemnify and hold harmless Desert Hot Springs and its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of the grossly negligent or willful misconduct of Cathedral City or its officers, officials, agents, employees and volunteers in the performance of this Agreement.

Section 17. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To Cathedral City:	Charles P. McClendon Cathedral City Manager Cathedral City of Cathedral City 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234 Telephone No: (760) 770-0391 Facsimile No: (760) 770-0399
With a Copy to:	Chief of Police George Crum Cathedral City Police Department 68-700 Avenida Lalo Guerrero Cathedral City, CA 92234
To Desert Hot Springs:	Martin Magana City Manager City of Desert Hot Springs 68950 Pierson Blvd Desert Hot Springs, CA 92240 Telephone No: (760)-329-2904 ext. 101 Facsimile No: (760) 288-3129
With a Copy to:	Chief of Police Desert Hot Springs Police Department 8950 Pierson Blvd

Desert Hot Springs, CA 92240

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 18. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between Cathedral City and Desert Hot Springs with respect to the subject matter of this Agreement. However, in no event does this Agreement supersede or alter the Multi-Agency Cooperative Agreement for Integration of Computer Aided Dispatch/Record Management and Mobile Data Communication Systems.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 19. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both parties.

Section 20. ASSIGNMENT AND SUBCONTRACTING

Assignments of any or all rights, duties or obligations of Cathedral City under this Agreement will be permitted only with the written consent of Desert Hot Springs.

Section 21. WAIVER

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 22. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 23. VENUE

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 24. LITIGATION EXPENSES AND ATTORNEYS' FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 25. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least a copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 26. AUTHORITY TO ENTER AGREEMENT

Each party warrants that individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and to bind each respective party.

Section 27. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 28. PRINCIPAL REPRESENTATIVES

a. The City Manager, or his or her designee, is designated as the principal representative of Cathedral City responsible for undertaking, managing and supervising the performance of all of the services set forth in the Scope of Services for this Agreement. Cathedral City Chief of Police or his or her designee shall be the principal

representative of Cathedral City for purposes of communicating with Desert Hot Springs on any matter associated with the performance of the services set forth in this Agreement.

b. The City Manager, or his or her designee, is designated as the principal representative of Desert Hot Springs. Desert Hot Springs Chief of Police or his or her designee shall be the principal representative of Desert Hot Springs for purposes of communicating with Cathedral City on any matter associated with the performance of the services set forth in this Agreement.

Section 29. INTERPRETATION

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

Section 30. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 31. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 32. RIGHTS AND REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF CATHEDRAL CITY:

CITY OF DESERT HOT SPRINGS:

**By: _____
Stan Henry, Mayor**

**By: _____
Adam Sanchez, Mayor**

ATTEST:

ATTEST:

**By: _____
Tami Scott, Risk Manager**

**By: _____
Jerryl Soriano, City Clerk**

ATTEST:

APPROVED AS TO FORM:

**By: _____
Gary Howell, City Clerk**

**By: _____
Steven B. Quintanilla,
City Attorney**

APPROVED AS TO FORM:

**By: _____
Charles R. Green, City Attorney**

EXHIBIT "A"

SCOPE OF SERVICES

PUBLIC SAFETY DISPATCHING SERVICES FOR DESERT HOT SPRINGS

A. Public Safety Answering Point and Communication Center

Cathedral City will provide a 24/7 Public Safety Answering Point ("PSAP") for Desert Hot Springs and data entry and removal specific to both the California Law Enforcement Telecommunications System (CLETS) and the National Law Enforcement Telecommunications System (NLETS) including but not limited to MUPS, SVS, APS, AFS, etc; as well as BOLOs, Repossessions, CIIIs, etc. Cathedral City will provide the same services to Desert Hot Springs as Cathedral City Dispatch currently provides within their own Department.

In addition, Cathedral City will provide 24/7 public safety communications center services to include the documentation of calls for police services and dispatching the appropriate Desert Hot Springs Police resources. The communication center services will include the transferring of medical and fire service calls for service to Riverside County Fire Department. Services will include the facilitation of radio communication between law enforcement units and allied public safety agencies operating within the City of Desert Hot Springs. The communications center will also provide NLETS and CLETS access to Desert Hot Springs police units in the field. Additionally, Cathedral City will provide the digital recording of all Desert Hot Springs' Police Department (DHSPD) radio traffic and telephone communications to the communications center. These recordings will be available for review to authorized DHSPD personnel on site at CCPD. They will be maintained for the appropriate time mandated by law and in accordance with this Agreement.

B. Personnel

Cathedral City will administer, manage and supervise the communications center and its personnel. Cathedral City will be responsible for supervising, hiring, training, and disciplining personnel. In addition, Cathedral City will maintain personnel files and other matters relating to the performance of services and control of personnel. Desert Hot Springs may provide comments regarding Cathedral City personnel, but any ultimate decisions regarding personnel shall be made in a lawful manner by Cathedral City.

A minimum of one dispatcher shall be on duty at all times dedicated to serving the City of Desert Hot Springs. Desert Hot Springs warrants that it understands that the assigned dispatcher for Desert Hot Springs will not solely perform duties exclusive to Desert Hot Springs while on-duty. All dispatchers in the communications center,

including those assigned to Cathedral City Police and Fire will have collateral duties and be available to assist other dispatchers when necessary to address the normal activity spikes for any assigned area.

Cathedral City will assign at least one dispatcher to any activation of the Desert Hot Springs Emergency Operations Center (EOC) until the EOC is deactivated. Additionally, dispatchers will be made available for special events or operations on a case by case basis with at least ten (10) days prior notification. The communications center shall maintain a ring down line to the Desert Hot Springs Police Department (DHSPD) to facilitate communications between DHSPD personnel and dispatcher. Cathedral City Police Management shall make itself available to attend any DHSPD requested administrative meetings to facilitate the smooth operation of Dispatch Services and the contents of this Agreement. In addition, Cathedral City shall make its dispatch supervisors available to attend any monthly communication center staff meetings to address any operational issues, as well as assessments and development of communication center procedures and policies.

Each Desert Hot Springs Police Officer shall be permitted to spend one shift observing dispatchers at the communications center. Each dispatcher shall be required to perform one ride-along with a Desert Hot Springs Police Officer. Management staff from both cities shall confer and agree on appropriate dates for the observations and/or ride-alongs to occur, taking staffing and operational needs into consideration.