

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into so as to be effective as of November __, 2015 (the "Effective Date"), by and between College of the Desert Alumni Association which is located at 43-500 Monterey Ave, Palm Desert, California 92260 ("CODAA") and the City of Cathedral City which is located at 68-700 Avenida Lalo Guerrero, Cathedral City, California 92234 ("Cathedral City"). For ease of reference CODAA and Cathedral City shall at times be referred to herein jointly as the "Parties" or individually as a "Party".

RECITALS

- A. CODAA and Cathedral City wish to collaborate on developing an outdoor street fair to take place on the first Wednesday evening of each month on Avenida Lalo Guerrero, Town Square Park, and the Festival Lawn located to the South-East of the Desert Cinemas UltraMAX Theater (the "CC Street Fair");
- B. The Parties believe that the CC Street Fair will benefit Cathedral City economically through the collection of the fees, taxes, and rents discussed below, and also be an enjoyable and convenient amenity for residents and visitors;
- C. CODAA is prepared to invest time and resources toward the creation and operation of the CC Street Fair, provided that it is reasonably assured that it can operate the CC Street Fair for a sufficient period of time so as to ensure a fair and reasonable return on its investment so as to further its own educational and charitable objectives;
- D. The desert area (i.e., Cathedral City and the rest of the Coachella Valley) are entering into the retail season where visitors, tourism, and part-time residents significantly increase the local population and thus the attractiveness of retail businesses, such as those contemplated at the CC Street Fair;
- E. In order to expedite the creation and development of the CC Street Fair, the Parties have agreed to enter into this nonbinding MOU to act as an interim agreement in principle until such time as a definitive written agreement can be prepared, approved, and signed by the Parties' decision-making bodies (the "Definitive Agreement").

WHEREFORE, in consideration of the above, the Parties hereby enter into this MOU on the terms and conditions set forth herein:

CREATION OF CC STREET FAIR/NAMING RIGHTS

The Parties shall work together cooperatively, reasonably, and in good faith toward the creation of the CC Street Fair on the terms and conditions set forth in this MOU until such time as a

Definitive Agreement is drafted and executed (which shall not exceed 60 days from the Effective Date). The Definitive Agreement shall, among other things, establish a permanent name for the CC Street Fair which is agreeable to all Parties.

CODAA RIGHTS AND RESPONSIBILITIES

CODAA shall have each of the following rights and responsibilities under this MOU:

- The right to manage and operate a street fair including, without limitation, the right to collect rents, fees, and/or other charges from any and all vendors at the CC Street Fair (except that no rent shall be charged for 1- 2 booth spaces for City and/or Non-Profit use);
- The right to establish a maximum of 150 vendor spaces with dimensions of approximately 10' x 10' spaces on the Premises and to sell advertising space (if, in its sole discretion, it deems it proper and appropriate);
- The obligation to reasonably ensure that vendors are licensed, possess a resale tax ID, have been licensed and have paid the necessary fees to Cathedral City, and that such vendors are also properly permitted through the applicable County, State, and Federal agencies;
- The obligation to take reasonable precautions to ensure that the vendors maintain structurally sound and aesthetically pleasing canopies which are weighted down consistent with the specifications of CODAA;
- The obligation to collect and pay all temporary vendor business license fees and rental fees on-time;
- The obligation to work cooperatively with Cathedral City to ensure maintenance and security of any street fair equipment in use; to secure any street fair equipment not in use in the proper storage areas established by the Cathedral City and to maintain such storage area in a safe and clean condition; to maintain, secure, and return upon request any electronic access keys to City Hall; to maintain safe walking paths for patrons free of exposed wires; and to provide reasonable security for each day the CC Street Fair is open for business.
- The obligation to maintain a minimum \$1,000,000 liability insurance policy which names the City as an additional insured.

CATHEDRAL CITY RIGHTS AND RESPONSIBILITIES

Cathedral City shall have each of the following rights and responsibilities under this MOU:

- The right to receive monthly rent in the amount of ten percent (10%) of the actual rent received by CODAA from the vendors each month within seven calendar days of the

event;

- The right to receive collection of applicable city fees, with each vendor having an annual business license or a \$3 per day temporary special event business license and each vendor paying a \$3 per day Special Event Fee within seven calendar days of the event;
- The responsibility to provide CODAA with adequate space in the previous specified locale so as to allow for up to 150 separate vendors in 10' x 10' vendor spaces on the first Wednesday of each month commencing in December 2015;
- The responsibility to provide up to a maximum of 15 vendor spaces with electricity in areas to be designated by CODAA;
- The responsibility to provide metal security barriers for cordoning off special permit areas, road closure signage and cones for safety, ample trash receptacles, dumpsters, and waste removal, reasonable storage space for the storage of CODAA's equipment, and access to public restrooms for patrons and employees.
- The responsibility to assist CODAA in securing any special health and/or ABC permits to the extent required or appropriate;
- The responsibility to assist with marketing at no additional charge to CODAA, which shall include the following:
 - a. Allowing a large banner to be installed by CODAA near the Festival Lawn along Highway 111;
 - b. Providing an Electronic Billboard at the Cathedral City Auto Center;
 - c. Advertising in Cathedral City's bi-yearly Special Events/Environmental direct mailer to 24,000 Cathedral City households;
 - d. Two months per year of ad placement at the Cathedral City Kiosk at the Palm Springs International Airport;
 - e. Ad placement on movie screens at the Mary Pickford Theatre up to June 30, 2016;
 - f. Informational video about the street fair and who it benefits on the City's Channel 17 Public Access on Time Warner Cable.

ADVERTISEMENT AND MARKETING

Marketing of the CC Street Fair and any media or other public relations contact should always be consistent with the aims of the CC Street Fair and only undertaken with the express agreement of both Parties. Where it does not breach any confidentiality protocols, a spirit of open and transparent communication should be adhered to. Co-coordinated communications should be made with external organizations to elicit their support and further the aims of the CC Street Fair.

COMPETING VENTURES

The Parties may participate in similar agreements with other public or private agencies, organizations, and individuals, provided that any such event(s) do not involve the operation of an evening street fair within the city limits of Cathedral City. To the fullest extent permitted by law, Cathedral City agrees that it shall not solicit the vendors produced by CODAA for the CC Street Fair for utilization in any competing venture.

NON-BINDING

This MOU is intended to be a non-binding signification of the intentions of the Parties as relates to the creation of the CC Street Fair. However, the Parties agree to work cooperatively, reasonably, and in good faith to have prepared and executed a Definitive Agreement within sixty (60) days of the Effective Date, which shall be on substantially the same terms as set forth in this MOU. In the event the Parties are unable to make a compromise and reach a final decision, it is understood that neither party is obligated to enter into a Definitive Agreement.

MISCELLANEOUS

The Definitive Agreement shall contain provisions governing the following:

- **Term**: That the initial term of agreement conclude May 31, 2016, with CODAA having three options to extend the term for an additional year under each option (for an aggregate of three years) by providing written notice to Cathedral City on or before May 31, 2016.
- **Governing Law**: That the Definitive Agreement shall be construed in accordance with the laws of the State of California.
- **Assignment**: That neither party may assign or transfer their rights or responsibilities under the Definitive Agreement without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.
- **Amendment**: That the Definitive Agreement may be amended or supplemented only in a writing, and only if the writing is signed by the Party obligated by the terms thereof.
- **Severability**: That if any provision of the Definitive Agreement is invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable and that, if a court finds that any provision of the Definitive Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.
- **Integration Clause**: That the Definitive Agreement shall constitute the entire agreement between the Parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, whether written or oral.

- **Non-Affiliation:** That the Parties are not to be deemed partners and/or joint venturers, but rather entirely independent and unrelated contracting parties.

SIGNATURES ON FOLLOWING PAGE

COLLEGE OF THE DESERT ALUMNI ASSOCIATION, INC.,
a California Non-Profit Corporation

CINDY STILLMAN, President / C.E.O.

CITY OF CATHEDRAL CITY

CHARLIE MCCLENDON, City Manager