

# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS

68-700 AVENIDA LALO GUERRERO

CATHEDRAL CITY, CA 92234

Wednesday, April 25, 2018

REGULAR MEETING

6:30 PM

- CALL TO ORDER
- PLEDGE OF ALLEGIANCE
- INVOCATION (MOMENT OF REFLECTION)
- ROLL CALL
- AGENDA FINALIZATION

At this time, the City Council may announce any items being pulled from the agenda or continued to another date.

STATEMENT OF PARTICIPATION BY THE DEPUTY CITY CLERK

#### 1. PUBLIC COMMENT

Public Comment is limited to 3 minutes per person.

#### 2. COUNCIL REPORTS

This is an opportunity for each member of the City Council to report on any conferences they attend, local events or make any other comments they may have.

#### 2.A CITY MANAGER REPORT

General Plan Update

#### 3. CONSENT AGENDA

All matters on the Consent Agenda are considered routine in nature and are expected to be enacted upon by the Council at one time without discussion. Any Council Member, Staff Member, or Citizen may request removal of an item from the Consent Agenda for discussion.

3.A. <u>2018-162</u> City Council Minutes of April 11, 2018

Recommendation: Approve the City Council Minutes of April 11, 2018.

3.B. <u>2018-147</u> Annual Approval of the City's Investment Policy

<u>Recommendation:</u> Staff recommends the City Council approve the updated investment policy.

3.C. 2018-131 Council Subcommittee Funding Recommendations for the Community Assistance Program

Recommendation: The Council subcommittee recommends the City Council approve the

award of grants and sponsorships for FY 18-19 through the Community

Assistance Program.

3.D. <u>2018-128</u> Appoint Mayor Stanley E. Henry as the Voting Delegate and Mayor

Pro Tem Greg Pettis as the Alternate Voting Delegate for the SCAG

**General Assembly Meeting** 

Recommendation: Appoint Mayor Stanley E. Henry as the Voting Delegate and Mayor Pro

Tem Greg Pettis as the Alternate Voting Delegate for the Southern California Association of Governments General Assembly Meeting to be

held on May 3, 2018.

3.E. 2018-130 Improvement Area No. 10 - CFD No. 2006-1 - Second Reading and

Adoption of an Ordinance Establishing a Special Tax Levy

Recommendation: Conduct the Second Reading and adopt the Ordinance authorizing the levy

of a special tax.

3.F. 2018-132 Agreement for Design Professional Services with Fomotor

Engineering in the amount of \$19,820 for Surveying Dinah Shore

**Drive between Date Palm Drive and West City Limits** 

Recommendation: Staff recommends the City Council authorize the City Manager to execute

an Agreement for Design Professional Services with Fomotor Engineering (Fomotor) in the amount of \$19,820 to complete the land survey phase of

the Dinah Shore Drive Pavement Rehabilitation Project.

3.G. <u>2018-141</u> Ordinance Increasing the Allocation for Art Education Programs to

30% from the Art in Public Places Fund

Recommendation: Staff recommends the City Council provide second reading and adopt an

ordinance increasing the permitted allocation for art education from the Art

in Public Places Fund to 30% annually.

#### 4. PUBLIC HEARINGS

#### 5. LEGISLATIVE ACTIONS

5.A. 2018-152 Palm Springs International Airport Commission Update from Mitch

**Spike** 

<u>Recommendation:</u> This is a presentation only, no formal action will be taken.

5.B. <u>2018-155</u> Appointment to the Planning Commission

Recommendation: Staff recommends the City Council make an appointment to the Planning

Commission with a term continuing to June 30, 2019.

# 5.C. 2018-133 Authorization for Albert Webb Associates to Design Two HAWK System Pedestrian Signals

Recommendation: Staff recommends the City Council approve a Task Order in the amount of

\$35,000 for Albert A. Webb Associates, Inc. (Webb) to prepare plans, specifications and cost estimates for two pedestrian hybrid beacons (HAWK System) as part of the CVAG Bicycle and Pedestrian Safety

Program.

5.D. 2018-137 Introduce First Reading of an Ordinance amending Section 3.12 and eliminating Section 3.30 of the Cathedral City Municipal Code - Contracts and Purchasing

Recommendation: Staff recommends the City Council introduce and give first reading by title

only to an Ordinance amending Section 3.12 and eliminating Section 3.30  $\,$ 

of the City's Municipal Code as Contracts and Purchasing.

5.E. 2018-142 Placement of Betty Gold Tiron IV Sculpture and Status of East Palm Canyon Median Landscape Project.

Recommendation: Staff recommends approval of the Public Arts Commission

recommendation to place Betty Gold Tiron IV within the East Palm Canyon Median and the allocation of \$13,300 from the public arts fund for the

installation and lighting of Tiron IV.

5.F. 2018-149 American Traffic Safety Contract Renewal

Recommendation: Staff recommends the City Council either renew the current contract

between the City of Cathedral City and American Traffic Solutions Inc. at the monthly rate of \$10,500 or in the alternative cancel the contract

between the City of Cathedral City and American Traffic Solutions Inc.

#### 6. CLOSED SESSION

The following Closed Session Items may have been heard during Study Session, otherwise they will be heard at this time.

6.A. <u>2018-134</u> Conference with Legal Counsel - Anticipated Litigation Pursuant to

Government Code Section 54956.9.

Initiation of litigation pursuant to Government Code Section

54956.9(d)(4). Number of potential cases: One

6.B. 2018-161 Conference with Legal Counsel - Existing Litigation pursuant to

Government Code section 54956.9(d)(1):

Name of Case: Cathedral City v. Rivera (Aurora Cota)

Riverside County Superior Court Case Number: INC1302340

6.C. 2018-136 Conference with Real Property Negotiator Pursuant to Government

Code Section 54956.8.

Property Location: Approximately 8.4 acres at the South side of Vega Rd

and Landau Blvd APN #s 678-060-001 to 005, and 678-060-049 to 053

Negotiating Parties: City of Cathedral City as Housing Successor and

Urban Housing Communities ("UHC")

Property Owners: City of Cathedral City as Housing Successor

**Under Negotiations**: Property Negotiations

6.D. <u>2018-138</u> Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

**Property Location:** Approximately 5 acres at the southeast corner of

West Buddy Rogers and East Palm Canyon Drive.

**Negotiating Parties:** City of Cathedral City as the Housing Successor Agency to the former Redevelopment Agency, City Urban Revitalization

Corporation and Cathedral Canyon Development LLC

**Property Owner:** City of Cathedral City as the Housing Successor Agency to the Former Redevelopment Agency and City Urban

Revitalization Corporation

**Under Negotiations:** Price and Terms for potential sale of real property.

6.E. <u>2018-140</u> Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

Property Location: Approximately 13.5 acres south of East Palm

Canyon Drive at Date Palm Drive

**Negotiating Parties:** City of Cathedral City as the Successor Agency to the former Redevelopment Agency and the City Urban Revitalization Corporation

Property Owner: City Urban Revitalization Corporation

**Under Negotiations:** Price and Terms for potential sale of real property

#### **ADJOURN**

The next Regular City Council Meeting will be held on Wednesday, May 9, 2018 at 6:30 p.m.

#### **NOTES TO THE PUBLIC**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting or other services offered by this City, please contact the City Clerk's Office at (760)770-0385. Assisted-listening devices are available at this meeting. Ask the City Clerk if you desire to use this device. Notification at least 48 hours prior to the meeting or the time when services are needed will assist city staff in assuring reasonable arrangements can be made to provide accessibility to the meeting or service.



### Cathedral City

### **Agenda Report**

**City Council** 

**MEETING DATE: 4/25/2018** 

TITLE:

**City Council Minutes of April 11, 2018** 

FROM:

Tracey Martinez, Deputy City Clerk

**RECOMMENDATION:** 

Approve the City Council Minutes of April 11, 2018.

**ATTACHMENT:** 

Minutes of April 11, 2018.



# CITY COUNCIL STUDY SESSION MINUTES

CITY COUNCIL CHAMBERS

68-700 AVENIDA LALO GUERRERO

CATHEDRAL CITY, CA 92234

Wednesday, April 11, 2018

STUDY SESSION

4:30 PM

#### CALL TO ORDER

Mayor Stan Henry called the Study Session Meeting of April 11, 2018, to order at 4:30 p.m.

#### ROLL CALL

Present 5 - Mayor Stan Henry, Mayor Pro Tem Gregory S. Pettis, Council Member Shelley Kaplan, Council Member Mark Carnevale, and Council Member John Aguilar

- AGENDA FINALIZATION
- STATEMENT OF PARTICIPATION BY THE DEPUTY CITY CLERK

#### 1. PUBLIC COMMENT

There were no Public Comments.

#### 2. STUDY SESSION

# 2.A. 2018-118 Interview Applicants for the Parks and Community Events Commission

Gary Marshall and Amanda Burr submitted applications to fill the unexpired seat on the Parks and Community Events Commission and were both interviewed by the City Council.

#### 2.B. 2018-105 Citywide Community Facilities District 2006-01 Discussion

Tami Scott, Administrative Services Director, gave an overview of the Citywide Community Facilities District 2006-01.

#### 2.C. <u>2018-107</u> Cathedral City Municipal Code - Contracts and Purchasing

Tami Scott, Administrative Services Director, gave an overview of the proposed Contracts and Purchasing Ordinance. It was the consensus of the City Council to move forward with the proposed Ordinance with the following inclusions:

Part 4 Section C - City Attorney Eric Vail will incorporate language to include best value in contract awards.

Part 4 Section D should read: Public projects of one hundred thousand dollars (\$100,000) or less may be performed by the employees of the City by force account, by negotiated contract or by purchase order.

It was also the consensus of the City Council to notify the BIA of the proposed Ordinance.

The proposed Ordinance will be brought back to the City Council for consideration at the next City Council meeting.

#### 2.D. <u>2018-119</u> Support for SB 1043

It was the consensus of the City Council to support SB 1043 and to send a letter of support.

### 3. CLOSED SESSION

#### **ADJOURN**

STANLEY E. HENRY, Mayor	
ATTEST:	
GARY F. HOWELL, City Clerk	

Mayor Stan Henry adjourned the Study Session Meeting at 5:52 p.m.



# CITY COUNCIL MINUTES

CITY COUNCIL CHAMBERS

68-700 AVENIDA LALO GUERRERO

CATHEDRAL CITY, CA 92234

Wednesday, April 11, 2018

REGULAR MEETING

6:30 PM

#### CALL TO ORDER

Mayor Stan Henry called the April 11, 2018, Regular Meeting of the City Council to order at 6:30 p.m.

#### PLEDGE OF ALLEGIANCE

Councilmember Shelley Kaplan lead the Pledge of Allegiance.

#### INVOCATION (MOMENT OF REFLECTION)

Councilmember Mark Carnevale offered the Invocation.

#### ROLL CALL

**Present:** 5 - Mayor Stan Henry, Mayor Pro Tem Gregory S. Pettis, Council Member Shelley Kaplan, Council Member Mark Carnevale, and Council Member John Aguilar

#### AGENDA FINALIZATION

#### STATEMENT OF PARTICIPATION BY THE DEPUTY CITY CLERK

#### 1. PUBLIC COMMENT

Janice Torres, Cathedral City, was called to speak. She stated that she lives in the Cove and her neighbor has severe code compliance issues. She stated that Code Compliance has been working with her but she would like to see something more done.

Dale Jag, Cathedral City, was called to speak. He requested that the City Council look into the amount of time it takes to respond to Public Records Requests.

#### 2. COUNCIL REPORTS

Council Member Mark Carnevale, reported that he attended the LGBTQ bed race event. He felt it was a wonderful event and a lot of fun. He thanked all those who attended, participated and help make the event happen. On Easter Sunday he attended an Easter Dinner at Desert Sun Mobile Home Community. He participated in a ridealong with Officer Hodge and Sgt. Chapman. He felt that it was a great experience and that the Police Department are doing a great job. He thanked the Chief of Police for cleaning-up encampments. He had some concerns with regard to the homeless issues and the efforts of Path of Life Ministries. A meeing was held with the key players with a positive outcome. He will continue to monitor his concern. He stated that he is working with the cultivation companies to hire some of the homeless people to help them get back on their feet. He will be attending the DVBA luncheon and a meeting with CORE.

Council Member John Aguilar, echoed the comments of Council Member Carnevale on LGBTQ Days. He stated

that there were thousands of kids and families in downtown for Kidapalooza, which was a great family event. He attended the Senior Center chili cook-off and the Cathedral City High School Choir fundraising carwash for their Italy trip.

Council Member Shelley Kaplan, commended everyone for a successful LGBTQ Weekend and Kidapalooza event. He, along with Mayor Pro Tem Greg Pettis attended the Coachella Valley Chapter of Sons of the American Revolution Flag Presentation to Palm Springs Motors. He attended the Coachella Valley Cannabis Alliance Network, which he felt was very informative. The Senior Center Chili cook-off was a wonderful event. The Desert Health Care District will be having their next Board Meeting at the Senior Center on April 24, 2018 at 6:00 p.m., they are trying to expand across the Valley.

Mayor Stan Henry announced that it is National Telecommunications Week. It is important to support all of our dispatchers and give them a big thank you. CVRep groundbreaking celebration fundraiser is on May 7, 2018 and encouraged everyone to attend. He attended the League of California Cities Executive Committee Meeting. He participated in a great meeting with the Greater Coachella Valley Chamber of Commerce. They are working on having all of their marketing packages in spanish. The Orion Awards will be held on May 24, 2018 at the Double Tree. They presented an overview of a Shop Cathedral City First program and website. They will be holding a Mixer at the Palm Springs Air Museum on May 2, 2018. They have received 120 business calls this past month and their membership has increased this quarter to 113 members, they have three staff for Cathedral City.

#### 3. CONSENT AGENDA

#### Approval of the Consent Agenda

A motion was made by Council Member Carnevale, seconded by Council Member Kaplan, to approve the following Consent Agenda Items. The motion carried by the following vote:

Aye:

5 - Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aquilar

#### 3.A. 2018-116 Receive and file Payment of Claims and Demands

This Item was approved.

Enactment No: M.O. 6923

3.B. <u>2018-111</u> City Council Minutes of March 28, 2018

This Item was approved.

Enactment No: M.O. 6924

3.C. <u>2018-104</u> Second Reading of an Ordinance Prohibiting the Purchase and Discharge of Illegal Fireworks and Revising Administrative Citation

and Administrative Fine and Adding Illegal Fireworks Enforcement

This Ordinance was adopted.

Enactment No: Ord 809

3.D. 2018-106 Authorization for the Repair & Replacement of Panorama Park Playground Equipment

This Item was approved.

Enactment No: M.O. 6925

# 3.E. 2018-109 Purchase of Six Panasonic Toughbook Computers for New Patrol Vehicles

This Item was approved.

Enactment No: M.O. 6926

#### 4. PUBLIC HEARINGS

#### 5. LEGISLATIVE ACTIONS

#### 5.A. 2018-117 Appointment to the Parks and Community Events Commission

A motion was made by Mayor Pro Tem Pettis, seconded by Council Member Carnevale, to appoint Gary Marshall to fill the unexpired term on the Parks and Community Events Commission with a term continuing to June 30, 2019. The motion carried by the following vote:

Aye: 5 - Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aguilar

Enactment No: M.O. 6927

# 5.B. 2018-122 Funding Request from the Mizell Center for the Congregate Meals Program at the Senior Center

A motion was made by Council Member Aguilar, seconded by Council Member Kaplan, to approve the funding in the amount of \$5,669 to fund the Congregate Meals Program for the remainder of the current fiscal year. The motion carried by the following vote:

Aye: 5 - Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aguilar

Enactment No: M.O. 6928

#### 5.C. <u>2018-115</u> CVRep Groundbreaking Fundraising Celebration

A motion was made by Council Member Kaplan, seconded by Council Member Aguilar, to approve Special Use Permit #18-012, waive the application fee, approve the in-kind use of the City's metal crowd control barricades and approve the financial sponsorship of \$7,500. CVRep will provide 10 passes to the City for students that may not be able to afford to attend the event. The motion carried by the following vote:

**Aye:** 5 - Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aguilar

Enactment No: M.O. 6929

#### 5.D. 2018-113 American Traffic Solutions Contract Renewal

Dale Jag, Cathedral City, was called to speak. He stated that he feels that the red light camera program should be discontinued. He feels that there are other alternatives. He stated that he appreciates Chief Walker's transparency.

Alan Carvalho, Cathedral City, was called to speak. Stated that he supports discontinuing the Red Light Camera

Program.

After much discussion, it was the consensus of the City Council to continue this item to April 25, 2018 so City Staff can do further analysis, including the use of the funds that are received from the program.

#### 5.E. <u>2018-108</u> Signal Synchronization Participating Agreement

A motion was made by Council Member Kaplan, seconded by Council Member Aguilar, to approve the Signal Synchronization Participating Agreement between the Coachella Valley Association of Governments (CVAG) and the City of Cathedral City. The motion carried by the following vote:

Aye:

 5 - Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aguilar

Enactment No: M.O. 6930

# 5.F. 2018-112 First Reading of an Ordinance Increasing the Allocation for Art Education Programs to 30% from the Art in Public Places Fund

Dale Jag, Cathedral City, was called to speak. He referred to a letter that the City received and encouraged the Council to consider what the letter was stating.

Alan Carvalho, Cathedral City, was called to speak. He stated that he is the Chair of the Public Arts Commission and is very excited and proud to see this item move forward.

Council Member Shelley Kaplan encourage staff to look into the Ordinance that the City of Los Angeles has and to share it with the Commission.

A motion was made by Mayor Pro Tem Pettis, seconded by Council Member Kaplan, to approve the first reading of an Ordinance amending section 11.45.130 of the Cathedral City Municipal Code relating to Art in Public Places Fund and direct the Commission to prepare a Budget Proposal on how the funds will be spent and to prepare a quarterly report so that the community is aware of where the funds are being spent. The motion carried by the following vote:

Aye:

5 - Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aguilar

Enactment No: M.O. 6931

#### 5.G. 2018-120 Heritage/Commons Amphitheater Project and Budget Review

A motion was made by Mayor Pro Tem Pettis, seconded by Council Member Kaplan, to approve a budget of 3.7 million dollars for the Heritage/Commons Amphiteater Project to include a Stage Structure Roof made of lumber, steel and a seamed roof and the children's play area to include a sunshade canopy and rubber surface fall area. The motion carried by the following vote:

Ave:

 Mayor Henry, Mayor Pro Tem Pettis, Council Member Kaplan, Council Member Carnevale, and Council Member Aguilar

Enactment No: M.O. 6932

#### 6. CLOSED SESSION

#### **ADJOURN**

Mayor Stan Henry adjourned the Regular City Council Meeting of April 11, 2018 at 8:32 p.m.

STANLEY E. HENRY, Mayor
ATTEST:
GARY F. HOWELL, City Clerk



### Cathedral City

### **Agenda Report**

City Council

**MEETING DATE: 4/25/2018** 

TITLE:

Annual Approval of the City's Investment Policy

FROM:

Tami Scott, Administrative Services Director

#### RECOMMENDATION:

Staff recommends the City Council approve the updated investment policy.

#### **BACKGROUND:**

Each year staff presents the investment policy to Council for review and approval. In 2004, we made a significant number of changes to our policy, mostly to comply with the requirements of State law. Those changes also expanded our investment options to align the city with various government, agency and highly-rated corporate investments. Since 2004, our primary investment strategy continues to be the safety of principal and the guideline to keep all investments made in accordance with the California Government Code. The last update to this policy was in 2015 when the investment maximum (limitation) was increased from \$40 million to \$50 million, and bond proceeds accounts no longer have deposit restrictions.

#### DISCUSSION:

In accordance with updates made to Government Code Section 16429.1 and Local Agency Investment Fund (LAIF) procedures, the City of Cathedral City's Investment Policy is updated on an annual basis. Currently, there are two updates proposed to the policy. The first is changing the Cathedral City Redevelopment Agency to Successor Agency under the "Purpose" header and second is increasing the insured deposits from \$100,000 to \$250,000 under the Federal Deposit Insurance Corporation "Glossary of Investment Terminology" header.

Our policy incorporates the key investment policy components of the League of California Cities, the California Society of Municipal Finance Officers, the California Municipal Treasurers Association, the Government Finance Officers Association and the Government Accounting Standards Board ("GASB") Statement No. 40. This policy positions the City of Cathedral City to continue to provide the conservative stewardship of our funds, while maximizing earnings and maintaining liquidity of funds.

File #: 2018-147 Item No: 3.B.

### **FISCAL IMPACT:**

None

ATTACHMENTS: Investment Policy April 2018



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#### **Mission Statement**

It is the policy of the City of Cathedral City to invest public funds in a manner which will provide the maximum security with best investment return, while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds.

#### **Purpose**

This statement is intended to provide guidelines for the prudent investment of the City of Cathedral City, Successor to the Redevelopment Agency, and Cathedral City Public Financing Authority (City) funds and to outline the policies for maximizing the efficiency of the City's cash management system. The ultimate goal is to enhance the economic status of the City while safeguarding its assets.

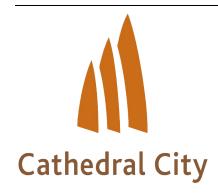
#### Municipal Code 2.12.040

Pursuant to the delegation of authority in Section 3.08.010, the City Treasurer is authorized to purchase, at their original sale or after they have been issued, securities which are permissible investments under any provision of state law relating to the investing of general city funds, including but not limited to Sections 53601 and 53635 of the Government Code, as said sections now read or may hereafter be amended, from moneys in his custody which are not required for the immediate necessities of the city and as he may deem wise and expedient, and to sell or exchange for other eligible securities and reinvest the proceeds of the securities so purchased. (Ord. 2 § 1 (part), 1981)

#### **Objectives**

The primary objectives, in order of priority, of the City's investment activities shall be:

- 1. <u>Safety of principal</u> is the foremost objective of the investment program. Investments shall be undertaken in a manner seeking to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk (the risk of loss due to failure of the financial institution, broker/dealer default, or erosion of market value) and interest rate risk (the risk that the market value of securities in the portfolio will fall due to changes in general interest rates). To attain this objective, the City will diversify its investments by investing funds among a variety of securities offering independent returns and financial institutions.
- 2. <u>Liquidity</u> is the second most important objective of the investment program. The investment portfolio shall remain sufficiently liquid to enable the City to meet all operating and capital requirements that may be reasonably anticipated. Prior to investing City funds, the City Treasurer shall meet with Finance Department staff to understand the City's projected cash needs for day-



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to-day operations and ongoing capital improvement projects. Using this information, the City Treasurer can then determine the appropriate length of time for the investment.

3. <u>Yield</u> or rate of return shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles taking into account the investment risk constraints and liquidity needs. Market rate of return is defined as the average return on the one-year U.S. Treasury Bill. Whenever possible, and in a manner consistent with the more important objectives of safety of principal and liquidity, a yield higher than the market rate of return shall be sought.

#### Standard of Care

The standard of care to be applied shall be the "prudent person," which states:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Officers and employees acting in accordance with the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.

Authority to manage the investment program is granted to the Treasurer, who shall be responsible for the investment of all funds. In his/her absence, the Administrative Services Director and/or Director of Finance, and City Manager, in that order, are authorized to act on his/her behalf. These responsibilities shall include the authority to open accounts with banks, brokers and dealers and to establish safekeeping accounts or other arrangements for the custody of securities and to execute such documents as may be necessary. Prior to any of the above activities being finalized, written concurrence by two of the above individuals shall be obtained.

Responsibility for the operation of the investment program is delegated to the Administrative Services Director and/or Director of Finance, who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. Transactions shall be complete, valid, authorized and properly recorded.



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#### Safekeeping of Securities

All securities owned by the City shall be held in a safekeeping account with the financial institution in the name of the City and under City control at all times. All trades, where applicable, shall be executed by delivery to the City, including those purchased for the City by financial advisers, consultants, or managers by book entry, physical delivery, or by third-party custodial agreement. All security transactions shall be evidenced by safekeeping receipts.

#### **Authorized Investments**

Sections 16429.1, 53601, 53601.1, 53601.7, 53635, and 53638 of the Government Code of the State of California set forth the investment vehicles available to local agencies as summarized in the following paragraphs. Section 53601, as now amended, provides that unless Section 53601 specifies a limitation on an investment's maturity, no investments with maturities exceeding five years shall be made unless otherwise directed by the City's Council members.

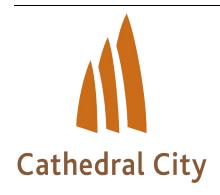
State Treasurer's Local Agency Investment Fund (LAIF) - As authorized in Government Code Section 16429.1 and by LAIF procedures, local government agencies are each authorized to invest a maximum of \$50 million (regular accounts) in this investment program administered by the California State Treasurer. Bond proceeds accounts have no deposit restrictions.

<u>Government Agency Issues</u> - As authorized in Government Code Sections 53601(a) through (f), this category includes a wide variety of government securities which include the following:

- Local government bonds or other indebtedness.
- State bonds or other indebtedness.
- U. S. Treasury notes or other indebtedness secured by the full faith and credit of the federal government.
- Other federal agency securities including but not limited to issues by the Government National Mortgage Association, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.
- State of California obligations such as California Treasury Notes or General Obligation Bonds.

Investment may be made up to 80 percent of the portfolio; however, the total amount may not be committed to any one agency.

**Bankers' Acceptances** - As authorized in Government Code Section 53601(g), 40 percent of the City's portfolio may be invested in bankers' acceptances, although no more than 30 percent of



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the portfolio may be invested in bankers' acceptances with any one commercial bank. Additionally, the maturity period may not exceed 180 days.

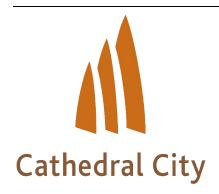
<u>Commercial Paper</u> - As authorized in Government Code Section 53601(h), 25 percent of the City's portfolio may be invested in commercial paper of the highest rating (A-1 or P-1) as rated by Moody's or Standard and Poor's, with maturities not to exceed 270 days. Local agencies may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. There are other qualifications regarding investments in commercial paper based on the financial strength of the corporation and the size of the investment.

<u>Negotiable Certificates of Deposit</u> - As authorized in Government Code Section 53601(i), no more than 30 percent of the agency's money may be invested in negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. All purchases must be fully insured by the FDIC or fully collateralized.

Medium-term notes (MTN's) - As authorized in Government Code Section 53601(k), medium-term notes are defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized ratings service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section; however, no more than 5 percent in any one issue or issuer.

Money Market Mutual Funds – As authorized in Government Code Section 53601(l)(2), shares of beneficial interest issued by diversified management companies that are money market mutual funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The company shall have met either of the following criteria: (a) attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations; or (b) retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund.



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A derivative is defined as a financial instrument created from or whose value depends on the value of one or more underlying assets or indexes of asset values. No investment shall be made in collateralized mortgage obligations (CMO's), interest-only (IO's) and principal-only (PO's) forwards, futures, currency and interest rate swaps, options, and caps/floor/collars. Neither shall any investment be made in reverse repurchase agreements as outlined in Government Code 53601(j).

Diversification of the portfolio will be made in such a manner as to avoid incurring unreasonable risks and with the objectives of this policy at all times. No investment shall be made in a security that is prohibited by this policy or by Government Code 53601.6. Liquidity shall be maintained in such a manner that no less than 20 percent of the portfolio shall have a term of one year or less.

At the time of each investment, either by renewal or initial purchase, an analysis shall be made of the entire portfolio to ensure the limit for that type of investment shall not be exceeded.

#### **Investments Held by Trustees**

Assets held by fiscal agents are held pursuant to formal agreements such as the requirements of a bond issue or an agreement between the City and another government agency or other entity. The investment of assets held by fiscal agents shall occur pursuant to these formal requirements as permitted by Section 53601(m) of the California Government Code. However, the investment of such assets is subject to the laws established by the State of California pertaining to investments by local agencies as well as the City's primary investment objectives.

#### **Deferred Compensation Plan Assets**

Investment decisions regarding these assets are made by the participants pursuant to the deferred compensation plans made available to the City and are not considered a part of this investment policy.

#### Reporting

Under provisions of the California Government Code Section 53646, there shall be a report at least quarterly made to the City Council and City Manager reporting the status of all investments. Per subdivision (d), the legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly. The City's Municipal Code requires the City Treasurer to make a monthly report to the City Council of all investments made pursuant to the authority delegated in this chapter. (Municipal Code 3.08.050 – Ord. 2 § 1 (part), 1981)

These reports shall show for all securities:



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- type of investment
- issuer or institution
- date of maturity
- amount of deposit
- rate of interest
- current market value
- accrued interest due
- current broker/dealers and par amount invested through their company as a percentage of the total portfolio

In addition to the items required by Section 53646 of the California Government Code, the following items should be included on the monthly reports to ensure compliance with this investment policy and Governmental Accounting Standards Board (GASB) Statement No. 40, *Deposit and Investment Risk Disclosures*:

- investment rating at time of purchase (Moody's / Standard & Poor's)
- investment rating as of June 30 of each fiscal year (Moody's / Standard & Poor's)

Investments held by a fiscal agent and agents for any deferred compensation funds shall be reported based on the most recent published reports received by the City at the time the report is made to the City Council.

#### **Qualified Dealers**

The City shall transact investment business only with banks, savings and loans, and registered securities dealers. All financial institutions and broker/dealers who desire to become bidders for investment transactions must supply the City with the following:

- audited financial statements
- proof of National Association of Security Dealers' certification
- trading resolution
- proof of California registration
- certification of having read the City of Cathedral City's investment policy
- résumé of employees who will be engaged in transactions with the City



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A periodic review of the financial condition and registrations of qualified bidders shall be conducted. An annual certification of having read the City's investment policy shall be required by all brokers/dealers.

The Treasurer shall review on a quarterly basis the LAIF report regarding its investments and the market value thereof and obtain and review the State Treasurer's investment policy and annual audited financial report as it pertains to LAIF.

#### **Policy Review**

This investment policy shall be reviewed at least annually by the City Council and City Manager or in accordance with California Government Code Section 53646 requirements.

#### **Glossary of Investment Terminology**

**AGENCIES:** Federal agency securities.

**AMORTIZED COST:** For investments purchased at a discount, amortized cost constitutes cost plus interest earned to date.

**ASKED:** The price at which securities are offered.

**BANKERS' ACCEPTANCE:** A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

**BASIS POINT:** A basis point equals one one-hundredth of 1% (.01%).

**BID:** The price offered for securities.

**BOOK ENTRY SECURITIES:** All U.S. Treasury and Federal Agencies are maintained on computerized records at the Federal Reserve; now known as "wireable" securities.

**BROKER:** A broker brings buyers and sellers together for a commission paid by the initiator of the transaction or by both sides.

**COST:** The purchase price of an investment.

**COLLATERAL:** Securities, evidence of deposit or other property a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.



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**CERTIFICATE OF DEPOSIT:** A time deposit with a specific maturity evidenced by a certificate. Large-denomination CDs are typically negotiable.

**COMMERCIAL PAPER:** An unsecured promissory note with a fixed maturity no longer than 270 days. The largest issuers include General Motors Acceptance Corporation (GMAC), General Electric Capital Corporation (GECC) and other major corporations.

**DEALER:** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for the dealer's own account.

**DELIVERY VERSUS PAYMENT:** There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

**DEBENTURE:** A bond secured only by the general credit of the issuer.

**DISCOUNT:** The difference between the cost price of a security and its value at maturity when quoted at lower than face value.

**DISCOUNT SECURITIES:** Securities that are issued at a discount and redeemed at maturity for full face value, e.g., U.S. Treasury bills. Interest is received at maturity.

**DIVERSIFICATION:** Dividing investment funds among a variety of securities and financial institutions offering.

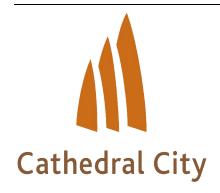
**FEDERAL CREDIT AGENCIES:** Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S & L's, small business firms, students, farmers, farm cooperatives, and exporters.

**FEDERAL FUNDS:** Non-interest-bearing deposits held by member banks at the Federal Reserve.

**FEDERAL FUNDS RATE:** The rate of interest at which Federal funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

**FEDERAL DEPOSIT INSURANCE CORPORATION:** A federal agency insuring bank deposits; currently up to \$250,000 per deposit.

**FEDERAL HOME LOAN BANKS:** The institutions regulating and lending to savings and loan associations.



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**FEDERAL HOME LOAN MORTGAGE CORPORATION** (**FHLMC**): A U.S. Corporation and instrumentality of the U.S. government. Through its purchases of conventional mortgages, it provides liquidity to the mortgage markets, much like FNMA. FHLMC's securities are highly liquid and widely accepted. FHLMC assumes and guarantees that all security holders will receive timely payment of principal and interest.

**FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA):** FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the U.S. Department of Housing & Urban Development. It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans in addition to fixed-rate mortgages. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

**FEDERAL OPEN MARKET COMMITTEE** (**FOMC**): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

**FEDERAL RESERVE SYSTEM:** The central bank of the United States created by Congress and consisting of a seven-member Board of Governors in Washington, D.C., 12 Regional Banks and about 5,700 commercial banks that are members of the system.

**GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae):** Securities guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loans associations and other institutions. Security holder is protected by full faith and credit of the U.S. Government.

**LIQUIDITY:** A liquid asset is one easily and rapidly converted into cash without a substantial loss of value.

**LOCAL AGENCY INVESTMENT FUND (LAIF):** The aggregate of all funds from political subdivisions placed in the custody of the State Treasurer for investment.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

**MASTER REPURCHASE AGREEMENT:** A written contract covering all future transactions between the parties to repurchase reverse repurchase agreements establishing each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.



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**MATURITY:** The date upon which the principal or stated value of an investment becomes due and payable.

**MONEY MARKET:** The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

**OPEN MARKET OPERATIONS:** Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank, as directed by the FOMC, in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

**PAR VALUE:** The amount realized upon maturity of an investment.

**PORTFOLIO:** Collection of securities held by the investor.

**PRIMARY DEALER:** A group of government securities dealers submitting daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight.

**PRIME RATE:** The rate at which banks lend to their best or "prime" customers.

**RATE OF RETURN:** The yield obtainable on a security based on its purchase price or its current market price.

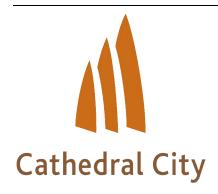
**REPURCHASE AGREEMENT:** A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate the buyer for this. Dealers use repurchase agreements extensively to finance their positions.

**SAFEKEEPING:** A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held for protection.

**SECONDARY MARKET:** A market for the purchase and sale of outstanding issues following the initial distribution.

**SECURITIES & EXCHANGE COMMISSION:** Agency created by Congress to protect investors in securities transactions by administering securities legislation.

**SETTLEMENT DATE:** The date on which a trade is cleared by delivery of securities against funds. This date may be the same as the trade date or later.



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**TRADE DATE:** The date on which a transaction is initiated or entered into by the buyer or seller.

**TREASURY BILL:** A discount security issued by the U.S. Treasury to finance the national debt maturing from three months to one year.

**TREASURY BONDS:** Long-term U.S. Treasury securities having initial maturities of more than ten years.

**TREASURY NOTES:** Intermediate term U.S. Treasury securities having initial maturities of from one to ten years.

**WHEN-ISSUED TRADES (WI):** Typically, there is a delay between the time a new bond is announced and sold, and the time when it is actually issued. During this interval, the security trades "wi", "when, as, and if issued."

**YIELD:** The rate of annual income return on an investment, expressed as a percentage: (a) income yield is obtained by dividing the current dollar income by the current market price for the security; (b) net yield or yield to maturity is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the security.



### Cathedral City

### **Agenda Report**

File #: 2018-131 Item No: 3.C.

**City Council** 

**MEETING DATE: 4/25/2018** 

TITLE:

**Council Subcommittee Funding Recommendations for the Community Assistance Program** 

FROM:

Charlie McClendon, City Manager

#### RECOMMENDATION:

The Council subcommittee recommends the City Council approve the award of grants and sponsorships for FY 18-19 through the Community Assistance Program.

#### **BACKGROUND:**

On January 13, 2016 Council approved a Community Assistance Program to comprehensively deal with requests for grants and sponsorships from community non-profit organizations and other governmental jurisdictions. Funding for the program for FY 18-19 is included in the proposed budget in the amount of \$28,000. There is a cap of \$3,000 per award.

#### **DISCUSSION:**

Council appointed an Ad Hoc Council subcommittee consisting of Mayor Henry and Councilmember Kaplan to review the applications and make a recommendation to the full Council for formal action. The subcommittee met on April 11, 2018 and reviewed the funding requests, which had been submitted.

Program Guidelines: Council established the following guidelines for the program:

- 1. Applicants must be a non-profit 501c-3 organization or a tribal or governmental agency.
- 2. Applicants must be based in Cathedral City or demonstrate that they provide services to residents or businesses of Cathedral City.
- 3. Applicants must be able to demonstrate that they receive funding from other sources and are not relying only on City support.
- 4. Preference will be given to applicants meeting health and human service needs of underserved

File #: 2018-131 Item No: 3.C.

populations.

Subcommittee Recommendations: The subcommittee recommended the following funding awards:

Organization Name	Requested/Recommended Award	New or Renewal	FY 2017-18 Funding			
ACBCI Milanovich Hike	\$2,500/\$2,500	Renewal	\$2,500			
Animal Samaritans	\$3,000/\$1,500	Renewal	\$1,500			
Shelter from the Storm	\$2,000/\$2,000	Renewal	\$3,000			
ACBCI Dinner in the Canyons	\$2,500/\$2,500	Renewal	\$2,500			
Transgender Community Coalition	\$3,000/\$1,500	New	0			
Assistance League of PS	\$3,000/\$2,000	Renewal	\$1,500			
CVAG Alan Seman Bus Pass	\$3,000/\$3,000	Renewal	\$3,000			
RSVP Riverside Co. Office on Aging	\$2,500/\$2,000	Renewal	\$1,500			
CCHS Symphonic Band	\$2,120/\$1,000	New	0			
CV Rep	\$3,000/\$2,000	New*	0			
Inland Congregations United for Change (ICUC)	\$3,000/\$1,500	New	0			
California Jazz Foundation	\$3,000/\$1,000	Renewal	\$1,000			
CV Symphony	\$2,000/\$2,000	Renewal	\$2,000			
Central Valley Little League	\$3,000/\$1,000	New	0			
Palm Springs Air Museum	\$3,000/\$1,500	Renewal	\$3,000			
CC Historical Society	\$2,500/\$1,500	Renewal	\$1,500			
TOTAL AWARDED	\$43,120/\$28,500					

<sup>\*</sup>The CV Rep is shown as new because they have not previously received funding through the Community Assistance Program. They have, however, received City funding through budget amendments.

The subcommittee further recommends that the allocations of \$28,500 be approved even though the \$28,000 budget will be exceeded by \$500. This recommendation allows funding of the recommended groups without going below \$1,000 for any award.

File #: 2018-131 Item No: 3.C.

The subcommittee also recommends that in future years the budget be divided into two categories, with \$12,000 set aside for groups with longstanding commitments from the City (CVAG Alan Seaman Bus Pass - \$3,000; RSVP Riverside County Office on Aging - \$2,000; Shelter from the Storm - \$2,000; ACBCI Milanovich Hike - \$2,500; ACBCI Dinner in the Canyons - \$2,500). Recommended funding in future budgets would then be \$30,000 if \$18,000 were designated for competitive grants.

#### **FISCAL IMPACT:**

Funding of \$28,000 for the awards is included in the proposed budget for FY 18-19. The additional \$500 will be absorbed in the budget through savings elsewhere.

#### **ATTACHMENTS:**

None



### Cathedral City

### **Agenda Report**

File #: 2018-128 Item No: 3.D.

**City Council** 

**MEETING DATE: 4/25/2018** 

#### TITLE:

Appoint Mayor Stanley E. Henry as the Voting Delegate and Mayor Pro Tem Greg Pettis as the Alternate Voting Delegate for the SCAG General Assembly Meeting

#### FROM:

Tracey Martinez, CMC Deputy City Clerk

#### **RECOMMENDATION:**

Appoint Mayor Stanley E. Henry as the Voting Delegate and Mayor Pro Tem Greg Pettis as the Alternate Voting Delegate for the Southern California Association of Governments General Assembly Meeting to be held on May 3, 2018.

#### **BACKGROUND:**

The 2018 Regional Conference & General Assembly for Southern California Association of Governments will be held May 3-4, 2018 in Indian Wells. SCAG is requiring that the City Council take formal action to appoint a voting and alternate delegate for the General Assembly Meeting, which will be held on May 3, 2018.

#### **DISCUSSION:**

Staff recommends that the Council appoint Mayor Stanley E. Henry as the voting delegate and Mayor Pro Tem Greg Pettis as the alternate for the General Assembly Meeting, which will be held on May 3, 2018, and direct staff to notify SCAG of this action.

#### **FISCAL IMPACT:**

There is no fiscal impact with this action.

#### ATTACHMENTS:

None



### Cathedral City

### **Agenda Report**

File #: 2018-130 Item No: 3.E.

City Council

**MEETING DATE: 4/25/2018** 

#### TITLE:

Improvement Area No. 10 - CFD No. 2006-1 - Second Reading and Adoption of an Ordinance Establishing a Special Tax Levy

#### FROM:

Tami Scott, Administrative Services Director

#### **RECOMMENDATION:**

Conduct the Second Reading and adopt the Ordinance authorizing the levy of a special tax.

#### **BACKGROUND:**

On January 24, 2018, the City Council declared its intention to form Improvement Area No. 10 of the City of Cathedral City Community Facilities District No. 2006-1 (Law Enforcement, Fire, Paramedic and Park Maintenance Services) ("CFD") for the purpose to pay for law enforcement, fire, paramedic, and park maintenance services. These services are in addition to those provided in the territory within the CFD prior to the formation of the CFD, and these services do not supplant services already available within such territory. The CFD was proposed by the property owners of the Horizon Gardens project.

#### DISCUSSION:

A public hearing occurred on March 14, 2018. The City Council adopted the resolution forming the CFD. A special election was held to authorize the levy of the special taxes. The proposition for levying the special taxes within the CFD passed with more than two-thirds of the votes cast by the qualified voters (the landowners) in favor of the proposition. Upon canvassing of the results of the special election, the City Council conducted the first reading of an Ordinance authorizing the levy of the special tax.

In the case of State budget cuts, the special taxes levied within this CFD will provide a secure source of funding for the services that may not be taken away by Sacramento. New developments are conditioned to join the CFD and will join through an annexation process. The annexations will be processed in a timely manner as new development goes through the approval processes.

File #: 2018-130 Item No: 3.E.

#### **FISCAL IMPACT:**

For the six existing buildings, the special levy will generate annual revenue beginning in FY 18/19 in the amount of \$2,665 adjusted by the FY 18 Consumer Price Index (not to exceed 3%).

#### **ATTACHMENTS:**

CFD 2006-1, IA #10 - Ordinance

CFD 2006-1, IA #10 - Notice of Special Tax Lien

CFD 2006-1, IA #10 - Rate and Method of Apportionment

#### ORDINANCE NO. \_\_\_\_

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 (LAW ENFORCEMENT, FIRE, PARAMEDIC AND PARK MAINTENANCE SERVICES) OF THE CITY OF CATHEDRAL CITY AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN SAID DISTRICT

WHEREAS, on January 24, 2018, the City Council (the "Council") of the City of Cathedral City, California (the "City") adopted Resolution No. 2018-02 stating its intention to form Improvement Area No. 10 of the City of Cathedral City Community Facilities District No. 2006-1 (Law Enforcement, Fire, Paramedic and Park Maintenance Services) (the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, (the "Act"); and

WHEREAS, notice was published as required by law relative to the intention of the Council to form the District; and

WHEREAS, on March 14, 2018, this Council held a noticed public hearing as required by law relative to the determination to proceed with the formation of the District and the rate and method of apportionment and manner of collection of the special tax to be levied within the District to finance certain public services; and

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the District were heard and a full and fair hearing was held; and

WHEREAS, the Council subsequent to said hearing adopted Resolution No. 2018-\_\_\_\_ (the "Resolution of Formation") determining the validity of prior proceedings relative to the formation of the District and establishing the District; and

WHEREAS, the Council subsequent to said hearing adopted Resolution No. 2018-\_\_\_\_ which called an election within the District for March 14, 2018 on the proposition of levying a special tax; and

WHEREAS, on March 14, 2018, an election was held within the District in which the eligible electors approved by more than two-thirds vote the proposition of levying a special tax;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Cathedral City as follows:

<u>Section 1</u>. A special tax is levied within the boundaries of the District pursuant to the formula set forth in Exhibit "A" attached hereto and incorporated by reference in an amount necessary to finance a portion of the cost of providing police protection, fire protection/paramedic and park maintenance services that are in addition to those provided in the territory within the district prior to the formation of the district.

- Section 2. This legislative body is hereby further authorized to provide, by resolution adopted as provided in Section 53340 of the Act, for the levy of the special tax in the then current tax year or future tax years, except that the special tax rates to be levied shall not exceed the maximum rates set forth in Exhibit "A".
- <u>Section 3</u>. All of the collections of the special tax shall be used as provided for in the Act and the Resolution of Formation.
- <u>Section 4</u>. The above authorized special tax shall be collected in the same manner as ordinary ad valorem taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency and provided for ad valorem taxes.
- Section 5. The Mayor shall sign this ordinance and the City Clerk shall attest to such signature. The City Clerk is directed to cause the title and summary or text of this ordinance, together with the vote thereon, to be published within fifteen (15) days after its passage at least once in a newspaper of general circulation published and circulated within the territorial jurisdiction of the City, and to post at the main office of the City a certified copy of the full text of the adopted ordinance along with the names of the Council Members voting for and against the ordinance.
- <u>Section 6</u>. This ordinance relating to the levy of the special tax takes effect and shall be in force from and after 30 days from the date of final passage. A copy of this ordinance shall be transmitted to the Clerk of the Board of Supervisors of Riverside County, the Assessor and the Treasurer-Tax Collector of Riverside County.

	PASSED, APPROVED and ADO	PTED	this	25 <sup>th</sup>	day	of	April,	2018	by 1	the	following
votes:											
	AYES:										
	NOES:										
		Mayo	r								
ATTE	ST·										
City C	lerk										

### **EXHIBIT A**

### RATE AND METHOD OF APPORTIONMENT

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of Cathedral City 68700 Avenida Lalo Guerrero Cathedral City, California 92234

Attention: Tami Scott

#### NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of the City of Cathedral City (the "City"), State of California, hereby gives notice that a lien to secure payment of special taxes is hereby imposed by the City Council of the City. The special taxes secured by this lien are authorized to be levied for the purpose of financing a portion of the cost of providing police protection services, fire protection/paramedic services and park maintenance services.

The special taxes are authorized to be levied within Improvement Area No. 10 of the City of Cathedral City Community Facilities District No. 2006-1 (Law Enforcement, Fire, Paramedic and Park Maintenance Services) ("Improvement Area No. 10") which has now been officially formed and the lien of the special taxes are a continuing lien which shall secure each annual levy of the special taxes and which shall continue in force and effect until the special taxes cease to be levied and a notice of cessation of special taxes is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of authorized special tax for Improvement Area No. 10 is as set forth in Exhibit "A" attached hereto and hereby made a part hereof. The obligation to pay the special tax may not be prepaid and permanently satisfied and the lien of the special taxes may not be canceled.

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levies shall become a lien upon all real property within Improvement Area No. 10 in accordance with Section 3115.5 of the Streets and Highways Code.

The name of the owner(s) and the assessor's tax parcel number(s) of the real property included within Improvement Area No. 10 are as set forth in Exhibit "B" attached hereto.

Reference is made to the boundary map of Improvement Area No. 10 recorded at Book 82 of Maps of Assessment and Community Facilities Districts at Page 2, in the office of the County Recorder for the County of Riverside, California which map is now and final boundary map of Improvement Area No. 10.

City, California 92234, (760) 770-0340.	
Dated:	
	CITY CLERK OF THE CITY OF
	CATHEDRAL CITY

owners or purchasers of real property subject to this special tax lien, interested persons should contact the City Manager of the City of Cathedral City, 68700 Avenida Lalo Guerrero, Cathedral

For further information concerning the current and estimated future tax liability of

STATE OF CALIFORNIA	) ) ss.	
COUNTY OF RIVERSIDE	)	
name and title of the officer), known to me (or proved to me name is subscribed to the within	before me, personally appeared on the basis of satisfactory eviden instrument and acknowledged to me that by her signature on the instrument.	, personally nce) to be the person whose that she executed the same
WITNESS my hand and	official seal.	
Signature	(SEAL)	

# EXHIBIT A RATE AND METHOD OF APPORTIONMENT

#### **EXHIBIT B**

#### PROPERTY OWNER NAME AND ASSESSOR'S TAX PARCEL NUMBER

Property Owner APNs

Horizon Gardens, LLC 681-310-007 & 681-310-031

# RATE AND METHOD OF APPORTIONMENT FOR IMPROVEMENT AREA NO. 10 OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 (HORIZON GARDENS) OF THE CITY OF CATHEDRAL CITY

A Special Tax as hereinafter defined shall be levied on all Assessor's Parcels in Improvement Area No. 10 ("IA No. 10") of Community Facilities District No. 2006-1 of the City of Cathedral City ("CFD No. 2006-1") and collected each Fiscal Year commencing in Fiscal Year 2017-2018, in an amount determined by the Council through the application of the appropriate Special Tax for "Developed Property" as described below. All of the real property in IA No. 10, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided. IA No. 10 is expected to be developed with ten buildings, six of which are currently existing buildings which will be rehabilitated for future use and four new buildings. IA No. 10 is expected to be developed into ten buildings to be used as Senior Living Facilities, as defined herein. Buildings 2 through 7 are existing buildings that are anticipated to be rehabilitated for future use. Buildings 1 and 8 through 10 are anticipated to be constructed in the future.

#### A. <u>DEFINITIONS</u>

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other recorded County parcel map.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of IA No. 10: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs to the City, IA No. 10 or any designee thereof of complying with City or IA No. 10 disclosure requirements; the costs associated with responding to public inquiries regarding the Special Taxes; the costs of the City, IA No. 10 or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or IA No. 10 for any other administrative purposes of IA No. 10, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

"CFD Administrator" means an official of the City, or designee thereof, responsible for the annual administration of IA No. 10 as provided herein.

"CFD No. 2006-1" means Community Facilities District No. 2006-1 of the City.

"Consumer Price Index" means the Consumer Price Index published by the U.S. Bureau of Labor Statistics for "All Urban Consumers" in the Los Angeles - Anaheim - Riverside Area, measured as of the month of December in the calendar year which ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for the City of Los Angeles.

"Council" means the City Council of the City, acting as the legislative body of CFD No. 2006-1.

"Developed Property" means, for each Fiscal Year, (i) all Taxable Property for which a building permit for new construction was issued prior to May 1 of the previous Fiscal Year, or (ii) the Existing Development.

"Existing Development" means the existing buildings located on APN 681-310-007 as listed in the table below. Such Existing Development will be rehabilitated for future use. Existing Development shall be taxed as Senior Living Facilities based on the Floor Area indicated in the table below.

Building	Floor Area
Building 2	2,998 sq. ft.
Building 3	2,998 sq. ft.
Building 4	2,998 sq. ft.
Building 5	2,998 sq. ft.
Building 6	2,998 sq. ft.
Building 7	3,003 sq. ft.

<sup>&</sup>quot;Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Floor Area" for any Non-Residential Property that is not Existing Development, means the total square footage of the building(s) located on such property, measured from outside wall to outside wall, exclusive of overhangs, porches, patios, carports, or similar spaces attached to the building but generally open on at least two sides. The determination of Floor Area shall be made by reference to the building permit(s) issued for such Assessor's Parcel. For Existing Development, the Floor Area is the amount shown in the table above.

"Improvement Area No. 10" means Improvement Area No. 10 of CFD No. 2006-1

<sup>&</sup>quot;City" means the City of Cathedral City.

<sup>&</sup>quot;County" means the County of Riverside.

(Horizon Gardens), as identified on the boundary map for CFD No. 2006-1.

"Land Use Class" means any of the classes listed in Table 1.

"Maximum Special Tax" means the Maximum Special Tax, determined in accordance with Section C.1 below, which can be levied in any Fiscal Year on any Assessor's Parcel.

"Non-Residential Property" means all Assessor's Parcels of Developed Property for which a building permit(s) was issued for a non-residential use, including any Existing Development.

"Non-Retail Commercial/Industrial Property" means all Assessor's Parcels of Non-Residential Property that are not Retail Commercial Property. For purposes of this definition, Senior Living Facilities shall be considered Non-Retail Commercial/Industrial Property.

"Property Owner Association Property" means, for each Fiscal Year, any Assessor's Parcel within the boundaries of IA No. 10 that was owned by or irrevocably offered for dedication to a property owner association, including any master or sub-association, as of January 1 of the previous Fiscal Year.

"Public Property" means, for each Fiscal Year, (i) any property within the boundaries of IA No. 10 that was owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency as of January 1 of the previous Fiscal Year; provided however that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified in accordance with its use; or (ii) any property within the boundaries of IA No. 10 that was encumbered, as of January 1 of the previous Fiscal Year, by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

"Residential Property" means all Assessor's Parcels of Developed Property for which a building permit has been issued for purposes of constructing one or more residential dwelling units. For purposes of this definition, Senior Living Facilities shall not be considered Residential Property.

"Retail Commercial Property" means all Assessor's Parcels of Non-Residential Property for which the building permit was issued for a retail sales tax generating use or which is being used primarily for a retail sales tax generating use, as determined by the CFD Administrator. However, if the land use of an Assessor's Parcel changes and such Assessor's Parcel no longer generates retail sales tax, such Assessor's Parcel shall no longer be considered Retail Commercial Property and shall be classified and taxed according to its use, as determined by the CFD Administrator.

"Senior Living Facilities" means independent living, assisted living facilities, and/or memory care facilities designed for seniors ages 55 and older. Such facilities are designed as a multi-residence housing facility, in which each person or couple in the building has a studio-style room or apartment-style suite. Additional facilities are provided within the

December 13, 2017 City of Cathedral City Page 3 building, including facilities for meals, gatherings, recreation activities, and some form of health or hospice care for assisted living/memory care residents.

"Special Tax" means the special tax to be levied in each Fiscal Year on each Assessor's Parcel of Developed Property.

"Taxable Property" means all of the Assessor's Parcels within the boundaries of IA No. 10 which are not exempt from the Special Tax pursuant to law or Section E below.

"Undeveloped Property" means, for each Fiscal Year, all Taxable Property not classified as Developed Property.

#### В. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, all Taxable Property within IA No. 10 shall be classified as Developed Property or Undeveloped Property and shall be subject to Special Taxes in accordance with the rate and method of apportionment determined pursuant to Section C. Residential Property shall be assigned to Land Use Class 1. Non-Retail Commercial/Industrial Property shall be assigned to Land Use Class 2.

#### C. **MAXIMUM SPECIAL TAX**

#### 1. Developed Property

#### a. Maximum Special Tax

The Maximum Special Tax for Fiscal Year 2017-2018 for each Land Use Class is shown below in Table 1.

TABLE 1 **Maximum Special Tax for Developed Property** For Fiscal Year 2017-2018 Improvement Area No. 10

Land Use Class	Description	Maximum Special Tax
1	Residential	\$636.89 per unit
2	Non-Retail Commercial/Industrial Property	\$0.1481 per sq. ft. of Floor Area

City of Cathedral City December 13, 2017 IA No. 10 of CFD No. 2006-1 (Horizon Gardens) Page 4

<sup>&</sup>quot;State" means the State of California.

#### b. Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2018, the Maximum Special Tax shall be increased (but not decreased) by the percentage change in the Consumer Price Index not to exceed three percent (3%) per Fiscal Year.

#### c. Multiple Land Use Classes

In some instances an Assessor's Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Tax that can be levied on an Assessor's Parcel shall be the sum of the Maximum Special Taxes that can be levied for all Land Use Classes located on that Assessor's Parcel.

#### 2. Undeveloped Property

No Special Tax shall be levied on Undeveloped Property.

#### D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2017-2018 and for each following Fiscal Year, the Council shall levy the Special Tax on each Assessor's Parcel of Developed Property at 100% of the applicable Maximum Special Tax.

#### Ε. **EXEMPTIONS**

No Special Tax shall be levied on Retail Commercial Property, Property Owner Association Property or Public Property. However, should an Assessor's Parcel no longer be classified as Retail Commercial Property, Property Owner Association Property or Public Property, its tax-exempt status will, without the necessity of any action by the Council, terminate.

#### F. APPEALS AND INTERPRETATIONS

Any landowner or resident may file a written appeal of the Special Tax on his/her property with the CFD Administrator, provided that the appellant is current in his/her payments of Special Taxes. During the pendency of an appeal, all Special Taxes previously levied must be paid on or before the payment date established when the levy was made. The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination. If the CFD Administrator agrees with the appellant, the CFD Administrator shall eliminate or reduce the Special Tax on the appellant's property and/or provide a refund to the appellant. Administrator disagrees with the appellant and the appellant is dissatisfied with the determination, the appellant then has 30 days in which to appeal to the Council by filing a written notice of appeal with the City Clerk, provided that the appellant is current in his/her payments of Special Taxes. The second appeal must specify the reasons for its disagreement with the CFD Administrator's determination.

December 13, 2017 City of Cathedral City Page 5 Interpretations may be made by the Council by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

#### G. MANNER OF COLLECTION

The Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that IA No. 10 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act.

#### H. TERM OF SPECIAL TAX

The Council is authorized to levy the Special Tax in perpetuity.



## Cathedral City

#### **Agenda Report**

City Council

**MEETING DATE: 4/25/2018** 

#### TITLE:

Agreement for Design Professional Services with Fomotor Engineering in the amount of \$19,820 for Surveying Dinah Shore Drive between Date Palm Drive and West City Limits

#### FROM:

John A. Corella, P.E. - City Engineer

#### **RECOMMENDATION:**

Staff recommends the City Council authorize the City Manager to execute an Agreement for Design Professional Services with Fomotor Engineering (Fomotor) in the amount of \$19,820 to complete the land survey phase of the Dinah Shore Drive Pavement Rehabilitation Project.

#### BACKGROUND:

The City will be advertising a call for bids for both, the reconstruction of the roadway on Dinah Shore Drive between Date Palm Drive and the western city limits (paid for by Assessment District, Gas Tax and Measure A finding); and, the reconstruction of the Dinah Shore-Date Palm intersection (paid for with SB-1 funding).

#### **DISCUSSION:**

To assure that the reconstruction of Dinah Shore will not adversely impact drainage along Dinah Shore Drive, Engineering Staff recommends that the Dinah Shore Drive corridor portion of this Project be surveyed to provide data and elevations in order to complete the plans for this Project.

Fomotor will provide base sheets with topography based on field survey, and street and stop-lane cross sections based on maximum 25-foot intervals. This work will not delay the advertising of this Project's call for bids.

#### **FISCAL IMPACT:**

There is adequate Funding for this Agreement which will be divided from three sources:

Assessment District 86-1 (25%): Fund 342-8839-8601

Gas Tax (37.5%): Fund 241-8839-8601 Measure A (37.5%): Fund 243-8839-8601 

## **ATTACHMENTS:**

Agreement for Design Professional Services with Fomotor.

# AGREEMENT FOR DESIGN PROFESSIONAL SERVICES BETWEEN THE CITY OF CATHEDRAL CITY, CALIFORNIA AND FOMOTOR ENGINEERING

This Agreement for Design Professional Services ("Agreement") is entered into as of April 25, 2018 ("Effective Date") by and between the City of Cathedral City, a municipal corporation ("City") and Fomotor Engineering a California Corporation ("Design Professional"). City and Design Professional are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

#### **RECITALS**

- A. City has sought, by informal quotes, the performance of the land surveying services defined and described particularly in Section 2 of this Agreement.
- B. Design Professional, following submission of a quote for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.
- C. Design Professional was selected by the City on the basis of Design Professional's demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required.
- D. Pursuant to the City of Cathedral City's Municipal Code, City has authority to enter into this Design Professional Services Agreement and the City Manager has authority to execute this Agreement.
- E. The Parties desire to formalize the selection of Design Professional for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

#### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 19 "Termination of Agreement" of this Agreement, the Term of this Agreement is for two months] commencing on the Effective Date.

#### SECTION 2. SCOPE OF SERVICES & SCHEDULE OF PERFORMANCE.

- (a) <u>Scope of Services</u>. Design Professional agrees to perform the services set forth in Exhibit "A" "Scope of Services" (hereinafter, the "Services") and made a part of this Agreement by this reference.
- (b) <u>Schedule of Performance</u>. The Services shall be completed within sixty (60) days. Should the Services not be completed pursuant to that schedule, the Design Professional shall be deemed to be in Default of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Design Professional to continue performing the Services.

#### SECTION 3. ADDITIONAL SERVICES.

Design Professional shall not be compensated for any work rendered in connection with its performance of this Agreement that are in addition to or outside of the Services unless such additional services are authorized in advance and in writing in accordance with Section 25 "Administration and Implementation" or Section 27 "Amendment" of this Agreement. If and when such additional work is authorized, such additional work shall be deemed to be part of the Services.

#### SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

- (a) Subject to any limitations set forth in this Agreement, City agrees to pay Design Professional total compensation, including reimbursement for actual expenses, Nineteen Thousand Eight Hundred Twenty dollars (\$19,820), unless additional compensation is approved in writing in accordance with Section 25 "Administration and Implementation" or Section 27 "Amendment" of this Agreement.
- Each month Design Professional shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-Design Professional contracts. Sub-Design Professional charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. If the compensation set forth in subsection (a) and Exhibit "B" include payment of labor on an hourly basis (as opposed to labor and materials being paid as a lump sum), the labor category in each invoice shall include detailed descriptions of task performed and the amount of time incurred for or allocated to that task. City shall independently review each invoice submitted by the Design Professional to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City. the original invoice shall be returned by City to Design Professional for correction and resubmission.

- (c) Except as to any charges for work performed or expenses incurred by Design Professional which are disputed by City, City will use its best efforts to cause Design Professional to be paid within forty-five (45) days of receipt of Design Professional's correct and undisputed invoice.
- (d) Payment to Design Professional for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Design Professional.

#### SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Design Professional's work under this Agreement, either during performance or when completed. City shall reject or finally accept Design Professional's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Design Professional's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Design Professional's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 15 "Indemnification" and Section 16 "Insurance."

#### SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Design Professional in the course of providing the Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Design Professional. Upon completion, expiration or termination of this Agreement, Design Professional shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Design Professional in the course of providing the Services pursuant to this Agreement, Design Professional's guarantees and warranties in Section 9 "Standard of Performance; Familiarity With Work" of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

#### SECTION 7. DESIGN PROFESSIONAL'S BOOKS AND RECORDS.

(a) Design Professional shall maintain any and all documents and records demonstrating or relating to Design Professional's performance of the Services. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work,

services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Design Professional pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

- (b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Design Professional's address indicated for receipt of notices in this Agreement.
- (c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Design Professional's business, City may, by written request, require that custody of such documents or records be given to the City. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

#### SECTION 8. INDEPENDENT CONTRACTOR.

- (a) Design Professional is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Design Professional shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.
- (b) The personnel performing the Services under this Agreement on behalf of Design Professional shall at all times be under Design Professional's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Design Professional or any of Design Professional's officers, employees, or agents except as set forth in this Agreement. Design Professional shall not at any time or in any manner represent that Design Professional or any of Design Professional's officers, employees, or agents are in any manner officials, officers, employees or agents of City.
- (c) Neither Design Professional, nor any of Design Professional's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Design Professional expressly waives any claim Design Professional may have to any such rights.

(d)

### SECTION 9. STANDARD OF PERFORMANCE; FAMILIARITY WITH WORK.

- Design Professional represents and warrants that it has the qualifications, (a) experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Design Professional shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services. In meeting its obligations under this Agreement, Design Professional shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to the Services required of Design Professional under this Agreement, and shall use such skill, prudence, and diligence as other members of Design Professional's profession commonly possess and exercise. In addition to the general standards of performance set forth this section. additional specific standards of performance and performance criteria may be set forth in Exhibit "A" "Scope of Work" that shall also be applicable to Design Professionals work under this Agreement. Where there is a conflict between a general and a specific standard of performance or performance criteria, the specific standard or criteria shall prevail over the general.
- (b) Design Professional warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

# SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Design Professional shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Design Professional shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Design Professional to comply with this section.

#### SECTION 11. PREVAILING WAGE LAWS.

It is the understanding of City and Design Professional that California prevailing wage laws do apply to this Agreement because the Agreement does involve land surveying work.

#### SECTION 12. NONDISCRIMINATION.

Design Professional shall not discriminate, in any way, in the employment of persons to perform the Services in violation of any federal or state law prohibiting discrimination in employment, including based on the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic

information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, of any person, except as provided under California Government Code section 12940.

#### SECTION 13. CONFLICTS OF INTEREST.

- (a) Design Professional covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Design Professional's performance of the Services. Design Professional further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Design Professional agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.
- (b) City may determine that Design Professional must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests. If such a determination is made, Design Professional shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk within ten (10) days of the request.
- (c) City understands and acknowledges that Design Professional is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Design Professional is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.
- (d) City understands and acknowledges that Design Professional will, perform non-related services for other governmental agencies and private parties following the completion of the Services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

#### SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

- (a) All information gained or work product produced by Design Professional in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Design Professional. Design Professional shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.
- (b) Design Professional, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning

the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Design Professional gives City notice of such court order or subpoena.

- (c) If Design Professional, or any officer, employee, agent or subcontractor of Design Professional, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Design Professional for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Design Professional's conduct.
- (d) Design Professional shall promptly notify City should Design Professional, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Design Professional or be present at any deposition, hearing or similar proceeding. Design Professional agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Design Professional. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

#### SECTION 15. INDEMNIFICATION.

Indemnification by Design Professional. As provided under Civil Code Section 2782.8, Design Professional shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims. actions and proceedings (whether at law or equity, administrative or judicial), demands, orders, judgments, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, (collectively "Claims") to the extent same arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional, its officers, agents, employees or subconsultants (or any entity or individual that Design Professional shall bear the legal liability thereof) in the performance of professional services under this Agreement. In the event Claims are found by the trier of fact to have been caused by the joint or concurrent negligence of the City, its contractors and other design professionals, and Design Professional, damages and expenses from both indemnity and duty to defend obligations shall be borne by each party in proportion to its negligence. Notwithstanding the foregoing, in the event one or more defendants are unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Design Professional shall meet and confer with other parties regarding unpaid defense costs. The provisions of this section pertaining to Design Professional's duty to defend shall not apply if there is a project-specific general liability policy of insurance that insures all project participants for general liability exposure on a primary basis and also covers all design professionals involved with the project for their legal liability arising out of their professional services on a primary basis.

- (b) <u>Indemnification from Subcontractors</u>. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant, subcontractor or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement naming the Indemnified Parties as additional indemnitees. In the event Design Professional fails to obtain such indemnity obligations from others as required here, Design Professional agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.
- (c) <u>City's Negligence</u>. The provisions of this section do not apply to Claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

#### SECTION 16. INSURANCE.

Design Professional agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "B" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Design Professional agrees to provide City with copies of required policies upon request.

#### SECTION 17. ASSIGNMENT.

The expertise and experience of Design Professional are material considerations for this Agreement. City has an interest in the qualifications and capability of the persons and entities who will fulfill the duties and obligations imposed upon Design Professional under this Agreement. In recognition of that interest, Design Professional shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Design Professional's duties or obligations under this Agreement without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement pursuant to Section 19 "Termination of Agreement." City acknowledges, however, that Design Professional, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

#### SECTION 18. CONTINUITY OF PERSONNEL.

Design Professional shall make every reasonable effort to maintain the stability and continuity of Design Professional's staff and subcontractors, if any, assigned to perform the Services. Design Professional shall notify City of any changes in Design

Professional's staff and subcontractors, if any, assigned to perform the Services prior to and during any such performance.

#### SECTION 19. TERMINATION OF AGREEMENT.

- (a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Design Professional. In the event such notice is given, Design Professional shall cease immediately all work in progress.
- (b) Design Professional may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.
- (c) If either Design Professional or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Design Professional, or City may terminate this Agreement immediately upon written notice.
- (d) Upon termination of this Agreement by either Design Professional or City, all property belonging exclusively to City which is in Design Professional's possession shall be returned to City. Design Professional shall furnish to City a final invoice for work performed and expenses incurred by Design Professional, prepared as set forth in Section 4 "Compensation and Method of Payment" of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 "Compensation and Method of Payment" of this Agreement.

#### SECTION 20. DEFAULT.

In the event that Design Professional is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Design Professional for any work performed after the date of default. Instead, the City may give notice to Design Professional of the default and the reasons for the default. The notice shall include the timeframe in which Design Professional may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Design Professional is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Design Professional does not cure the default, the City may take necessary steps to terminate this Agreement under Section 19 "Termination of Agreement." Any failure on the part of the City to give notice of the Design Professional's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

#### SECTION 21. EXCUSABLE DELAYS.

Design Professional shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Design Professional. Such causes include, but are not limited to,

acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

#### SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the Services shall be furnished to Design Professional in every reasonable way to facilitate, without undue delay, the Services to be performed under this Agreement.

#### SECTION 23. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Cathedral City

Attn: City Manager

68-700 Avenida Lalo Guerrero Cathedral City, CA 92234

To Design Professional: Fomotor Engineering

Attn: Phillip K. Fomotor, P.E, PLS 225 South Civic Drive Suite 1-5 Palm Springs, CA 92262

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

#### SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Design Professional represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Design Professional to the performance of its obligations hereunder.

#### SECTION 25. ADMINISTRATION AND IMPLEMENTATION.

This Agreement shall be administered and executed by the City Manager or his or her designated representative. The City Manager shall have the authority to issue interpretations and to make amendments to this Agreement, including amendments that commit additional funds, consistent with Section 27 "Amendment" and the City Manager's contracting authority under the Cathedral City Municipal Code.

#### SECTION 26. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

#### SECTION 27. AMENDMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Design Professional and by the City. The City Manager shall have the authority to approve any amendment to this Agreement if the total compensation under this Agreement, as amended, would not exceed the City Manager's contracting authority under the Cathedral City Municipal Code. All other amendments shall be approved by the City Council. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### SECTION 28. WAIVER.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Design Professional shall not constitute a waiver of any of the provisions of this Agreement.

#### SECTION 29. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

#### SECTION 30. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

#### SECTION 31. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Design Professional and City prior to the execution of this Agreement. No statements, representations or other agreements,

whether oral or written, made by any Party which are not embodied herein shall be valid and binding.

#### SECTION 32. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

#### SECTION 33. CONFLICTING TERMS.

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

CITY OF CATHEDRAL CITY	FOMOTOR ENGINEERING
Charles P. McClendon City Manager	By: Phillip K. Fomotor Its: President
ATTEST:	By:
Gary F. Howell City Clerk	
APPROVED AS TO FORM	
Eric S. Vail City Attorney	

NOTE: DESIGN PROFESSIONAL'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DESIGN PROFESSIONAL'S BUSINESS ENTITY.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

## ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA

STATE OF CALIFORN COUNTY OF RIVERSI		) )
On	. 2016	
before me,	, 2010	
Date		, Name And Title Of Officer (e.g. "Jane Doe, Notary Public")
personally appeared		Name of Signer(s)
		who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
		I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
		WITNESS my hand and official seal.
		Signature of Notary Public
		OPTIONAL
Though this section is option is contice the section is continuous form to the section in the section is continuous.	onal, completing this o an unintended doc	information can deter alternation of the document or fraudulent ument.
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Individual Corporate Officer		
Т	itle(s)	Title or Type of Document
Partner(s)	" Limited " General	Sypt of Essential
Attorney-In-Fact Trustee(s) Guardian/Conservator Other:		Number Of Pages
igner is representing: ame Of Person(s) Or Entity(ies)		Date Of Document

A notary public or other officer completing this certificate verifies only the identity of the individual who

signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

#### ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

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			•	nder PENALTY OF PERJURY under the laws of the California that the foregoing paragraph is true and
			WITNESS	my hand and official seal.
			7	Signature of Notary Public
			OP'	ΓΙΟΝΑL
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	CAPACIT(IES) CLAIME	D BY SIGNER(	S)	DESCRIPTION OF ATTACHED DOCUMENT
Sig	ner's Name:			
••	Individual			
	Corporate Officer			
	Title	(s)		Title or Type of Document
	Partner(s)	" Limited " General		
	Attomey-In-Fact Trustee(s) Guardian/Conservator			Number Of Pages
	Other:			Date Of Document
	ner is representing: ne Of Person(s) Or Entity(ies)			

Signer(s) Other Than Named Above

# EXHIBIT "A" SCOPE OF SERVICES

### Fomotor Engineering

225 South Civic Drive, Suite 1-5 • Palm Springs, California 92262 Office: (760) 323-1842 • Facsimile: (760) 323-1742

Email: phillip@fomotor.com

Civil Engineering

Land Surveying

Land Planning

April 12, 2018

Efrain Rodriguez Engineering Technician I City of Cathedral City 68700 Avenida Lalo Guerrero Cathedral City, CA 92234 Ph. (760) 202-2405

SUBJECT: Land Survey services for approximately 5,600 linear feet of street cross sections along Dinah Shore Drive, Date Palm Drive and Cathedral Canyon Drive.

Dear Efrain.

Pursuant to your request, we are pleased to present the following proposal for approximately 5,600 linear feet of street cross sections along Dinah Shore Drive, Date Palm Drive and Cathedral Canyon Drive.

#### I. SCOPE OF SERVICES

#### Field Survey

- Perform control field survey locating street centerline monuments to be used as a basis of bearing and a local Cathedral City benchmark.
- All cross sections to be taken at a maximum of 25' intervals with sections beginning at right-of-way or wall to right-of-way or wall. Right of way widths to be plotted per current Assessor Map or per Client provided maps/ title information.
- · Perform field survey obtaining cross section along Dinah Shore beginning at the easterly end of the concrete bridge westerly of Shifting Sands Trail to 200' easterly of the easterly stop bar at the intersection of Date Palm Drive.
- Perform field survey obtaining cross section along Cathedral Canyon Drive beginning 200' northerly of the northerly stop bar of the intersection of Dinah Shore Drive to 200' southerly of the southerly stop bar of the intersection of Dinah Shore Drive
- Perform field survey obtaining cross section along Date Palm Drive beginning 200' northerly of the northerly stop bar of the intersection of Dinah Shore Drive to 200' southerly of the southerly stop bar of the intersection of Dinah Shore Drive.

City of Cathedral City: Land survey services for the street cross sections of Dinah Shore Drive, Cathedral Canyon Drive, and Date Palm Drive.
Fomotor Engineering April 12, 2018

#### **Topographical Survey Base Sheet**

Prepare Survey Base Sheet of plotting street, curb return and visible street utilities noting elevation cross sections obtained per the above field survey. Generate 1 foot contours of the existing street and curb returns.

#### II. ASSUMPTIONS

We have made the following assumptions in the preparation of this proposal. Should any of these assumptions prove to be inaccurate, an adjustment in the Scope of Services and associated compensation may be required.

- 1. A title report will be obtained by the Client to identify all easements and rights-ofway. Easement plotting is not part of this scope.
- 2. All permit fees, plan check fees, recordation fees, agency review fees, agency document retrieval and copy fees and similar fees are to be paid by the Client.
- 3. Expenses for reproduction, postage, delivery are considered reimbursable. We suggest an additional \$100.00 be budgeted for these expenses.
- 4. Additional services beyond the scope outlines herein will be provided on an hourly basis with prior Client approval per the attached "2018 Schedule of Hourly Rates" or per a mutually agreed upon lump sum fee. Additional services may include redesign and/or additional design due to site plan changes, changes in Client or agency requirements, and the like
- 5. Pot holing of existing utilities, if required, will be provided by Client.
- 6. Utility research and plotting per as built utility plats is not part of this scope.

City of Cathedral City: Land survey services for the street cross sections of Dinah Shore Drive, Cathedral Canyon Drive, and Date Palm Drive.
Fomotor Engineering April 12, 2018

#### III. COMPENSATION

Land Survey # 7070.

We propose to perform the services outlined above for the following fee schedule

Field Survey
Topographical Survey Base Sheet

Lump Sum Fee of \$19,820.00 at prevailing wage (\$15,020.00 at non prevailing wage)

Survey submission to City by May 3, 2018.

Our work will be governed by the enclosed Conditions of Service. If this proposal meets with your approval please sign below and return one copy. I would like to thank you for this opportunity to be of service and am looking forward to working with you on this project.

Best regards, FOMOTOR ENGINEERING (Fomotor, Inc.)	Approved by Client:	
PHILLIP K. FOMOTOR, P.E., P.L.S.	By:	
CEO	Name:	
Civil # 47284	Title:	
QSD / QSP # 23078		

City of Cathedral City: Land survey services for the street cross sections of Dinah Shore Drive, Cathedral Canyon Drive, and Date Palm Drive.

Fomotor Engineering April 12, 2018

#### **CONDITIONS OF SERVICE**

- This agreement contains the entire agreement between Client and Consultant relating to the project and the
  provision of services to the project. Any prior agreements, promises, negotiations or representations not
  expressly set forth in this agreement are of no force of effect. Subsequent modifications to this agreement shall
  be in writing and signed by both Client and Consultant.
- 2. All fees and other charges will be billed monthly and shall be due at the time of billing.
- Client agrees that the periodic billings from Consultant to Client are correct, conclusive, and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing.
- 4. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one half percent (1-1 1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing sixty (60) days after the date of the original billing.
- The Consultant's total liability related to the services provided shall be limited to the coverage provided by Fomotor Engineering's insurance company.
- Client agrees that if Client requests services not specified pursuant to the Scope of Services description within this agreement, Client agrees to pay for all such additional services as extra work.
- 7. In the event all or any portion of the work prepared or partially prepared by Consultant be suspended, abandoned, or terminated, Client shall pay Consultant for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein. Client acknowledges if the project work is suspended and restarts, there will be additional charges due to suspension of the work which shall be paid for by Client as extra work.
- 8. In the event that Client institutes a suit against Consultant, either directly by complaint or by way of cross-complaint for indemnity, for alleged negligence, error, omission, or other failure to perform, and if Client fails to obtain a judgment in Client's favor, the lawsuit is dismissed, or if judgment is rendered for Consultant, Client agrees to pay Consultant all costs of defense, including reasonable attorney' fees, expert witness fees, court costs, and any and all other expenses of defense. Client agrees such payments shall be made immediately following dismissal of the case or upon entry of judgment.
- 9. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.
- 10. Client agrees that in the event Client institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which Consultant's principal place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.
- 11. Client acknowledges that Consultant is not responsible for the performance of work by third parties.
- 12. Consultant makes no warranty, either expressed or implied, as to his findings, recommendations, plans, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance.
- 13. This contract is valid for 60 days from the date on page one to begin our scope of work.
- 14. Work will be stopped on any job that has invoices outstanding for more than 60 days. Client agrees to waive any claim against any claims against Consultant, and to indemnify, defend, and hold Consultant harmless from and against any claims arising from Consultant's suspension or termination due to Client's failure to provide timely payment.
- 15. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and Client further agrees to defend, indemnify and hold Consultant harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting liability arising from the sole negligence of Consultant.

# EXHIBIT "B" INSURANCE

A. <u>Insurance Coverages</u>. Service Provider shall provide and maintain insurance, acceptable to the City, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Service Provider, its agents, representatives or employees. Service Provider shall procure and maintain the following scope and limits of insurance:

#### Only the following "marked" requirements are applicable:

X Commercial General Liability (CGL): Insurance written on an occurrence basis to protect Service Provider and City against liability or claims of liability which may arise out of this Agreement in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). Coverage shall be at least as broad as Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. additional insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

X Vehicle Liability Insurance: Vehicle liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person, and subject to the same minimum for each person, in an amount not less than one million dollars (\$1,000,000) for each accident, and property damage insurance in an amount of not less than one million dollars (\$1,000,000). A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits. Coverage shall be at least as broad as Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the approval of the City.

X Workers' Compensation Insurance: Workers' Compensation insurance that includes a minimum of one million dollars (\$1,000,000) of employers' liability coverage. Service Provider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives. In the event a claim under the provisions of the California Workers' Compensation Act is filed against City by a bona fide employee of Service Provider participating under this Agreement, Service Provider is to defend and indemnify the City from such claim.

X Professional Liability Insurance: Professional liability insurance appropriate to the Service Provider's profession in an amount not less than one million dollars

\$1,000,000 per occurrence. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to Services performed under this Agreement. The insurance must be maintained for at least three (3) consecutive years following the completion of Service Provider's services or the termination of this Agreement. During this additional three (3) year period, Service Provider shall annually and upon request of the City submit written evidence of this continuous coverage.

B. <u>Other Provisions</u>. Insurance policies required by this Agreement shall contain the following provisions:

#### 1. All Coverages.

- a. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.
- b. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

#### 2. Commercial General Liability and Automobile Liability Coverages.

- a. City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Service Provider performs; products and completed operations of Service Provider; premises owned, occupied or used by Service Provider; or automobiles owned, leased, hired or borrowed by Service Provider. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.
- b. Service Provider's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Service Provider's insurance.
- c. Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- d. Any failure to comply with the reporting or other provisions of the insurance policies, including breaches of warranties, shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.
- e. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.
- 3. <u>Workers' Compensation Coverage</u>. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Service Provider.
- C. Other Requirements. Service Provider agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City may require that Service Provider furnish City with copies of original endorsements effecting coverage required by this Exhibit "C". The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.
- 1. Service Provider shall furnish certificates and endorsements from each sub-contractor identical to those Service Provider provides.
- 2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers, or the Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
- 3. The procuring of such required policy or policies of insurance shall not be construed to limit Service Provider's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.



## Cathedral City

#### **Agenda Report**

City Council

**MEETING DATE: 4/25/2018** 

TITLE:

Ordinance Increasing the Allocation for Art Education Programs to 30% from the Art in Public Places Fund

#### FROM:

Public Arts Commission / Deanna Pressgrove

#### RECOMMENDATION:

Staff recommends the City Council provide second reading and adopt an ordinance increasing the permitted allocation for art education from the Art in Public Places Fund to 30% annually.

#### **BACKGROUND:**

On February 12, 2018, the Public Arts Commission approved a recommendation to City Council requesting an increase to the allocation for art education programs to 30% from the Art in Public Places fund.

On March 28, 2018, City Council discussed the Public Arts Commission's recommendation and directed staff to prepare an ordinance increasing the allocation for art education from 10% to 30% from the Art in Public Places fund.

The ordinance passed its first reading at the April 11, 2018 City Council meeting.

#### **DISCUSSION:**

The increase to 30% would be based on the 2018-2019 fiscal year fund balance. The thirty percent arts education allocation shall be calculated annually based on the total balance in the art in public places fund as of July 1 of each fiscal year. Any unused portion of the thirty percent arts education allocation shall remain in the art in public places fund. The thirty percent arts education shall not be cumulative and shall be re-calculated every fiscal year.

Per Council's direction, staff will work with the Public Arts Commission on the development of a policy

File #: 2018-141 Item No: 3.G.

that includes program goals and guidelines and bring back to City Council for adoption.

#### **FISCAL IMPACT:**

The increase to 30% would apply to the Art in Public Places Fund for the fiscal year beginning July 1, 2018 and annually thereafter. There will be no effect on the total amount of fees collected by the fund.

#### **ATTACHMENTS:**

Proposed Ordinance

ORDINANCE NO.	
---------------	--

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY AMENDING SECTION 11.45.130 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO ART IN PUBLIC PLACES FUND

**WHEREAS**, the City Council of the City of Cathedral City wishes to amend the amount designated for art education in the City's art in public places fund; and

**WHEREAS**, the City Council finds the amendment regarding an increase in funds for art education is in the best interest of the City's general welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES HEREBY ORDAIN AS FOLLOWS:

# SECTION 1 AMENDMENT TO CATHEDRAL CITY MUNICIPAL CODE SECTION 11.45.130

Section 11.45.130 of the Cathedral City Municipal Code is hereby amended to read as follows:

E. On an annual basis, up to thirty percent of the art in public places fund may be used for art education, including any and all ancillary costs associated with funding such art education (the "arts education allocation"). The thirty percent arts education allocation shall be calculated annually based on the total balance in the art in public places fund as of July 1 of each fiscal year. Any unused portion of the thirty percent arts education allocation shall remain in the art in public places fund. The thirty percent arts education allocation shall not be cumulative and shall be re-calculated every fiscal year.

#### SECTION 2 SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

#### **SECTION 3 EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days after its second reading and adoption by the City Council.

# SECTION 4 POSTING

The City Clerk shall, within fifteen (15) days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

SECTION 5	CERTIFICATION	
	Ordinance was approved and adopted at a meeting of the City Councer of April, 2018, by the following vote:	il
Ayes:		
Noes:		
Abstain:		
Absent:		
	Stan Henry, Mayor	
ATTEST:		
Gary F. Howell, City	Clerk	
APPROVED AS TO F	ORM:	
Eric S. Vail, City Atto	 prney	



# **Agenda Report**

File #: 2018-152 Item No: 5.A.

City Council

**MEETING DATE: 4/25/2018** 

TITLE:

Palm Springs International Airport Commission Update from Mitch Spike

FROM:

Tracey Martinez, CMC Deputy City Clerk

# **RECOMMENDATION:**

This is a presentation only, no formal action will be taken.

## **BACKGROUND:**

Mayor Pro Tem Greg Pettis requested an update from our appointed Commissioner to the Palm Springs International Airport Commission, Mitch Spike.

#### **DISCUSSION:**

Mitch Spike will present the City Council with an update in the Palm Springs International Airport Commission. Tom Nolan, Airport Director, will also be in attendance to answer any questions the Council may have.

#### **FISCAL IMPACT:**

There is no fiscal impact with this item.

# **ATTACHMENTS:**

None



# **Agenda Report**

File #: 2018-155 Item No: 5.B.

**City Council** 

**MEETING DATE: 4/25/2018** 

TITLE:

**Appointment to the Planning Commission** 

FROM:

Tracey R. Martinez, CMC Deputy City Clerk

#### **RECOMMENDATION:**

Staff recommends the City Council make an appointment to the Planning Commission with a term continuing to June 30, 2019.

#### BACKGROUND:

A vacancy currently exists on the Planning Commission due to the resignation of Stan Barnes.

#### **DISCUSSION:**

The vacancy on the Planning Commission was posted as required by Government Code 54974 and applications were accepted through Wednesday, April 18, 2018, at the end of the business day. A total of 3 applications were received. Interviews were conducted during Study Session on April 25, 2018.

Based on the interviews conducted the City Council is appointing the following:

to the Planning Commission with a term continuing to June 30, 2019.

#### **FISCAL IMPACT:**

No fiscal impact results from making appointments to the Commissions.

# **ATTACHMENTS:**

None



# **Agenda Report**

City Council

**MEETING DATE: 4/25/2018** 

TITLE:

Authorization for Albert Webb Associates to Design Two HAWK System Pedestrian Signals

FROM:

John A. Corella, P.E. - City Engineer

#### RECOMMENDATION:

Staff recommends the City Council approve a Task Order in the amount of \$35,000 for Albert A. Webb Associates, Inc. (Webb) to prepare plans, specifications and cost estimates for two pedestrian hybrid beacons (HAWK System) as part of the CVAG Bicycle and Pedestrian Safety Program.

# **BACKGROUND:**

In August 2017, Cathedral City and CVAG signed a reimbursement agreement providing the City with a \$180,000 contribution (Grant) from the Bicycle and Pedestrian Safety Program. The funds are to be applied toward the construction of a HAWK System, mid-block pedestrian crossing on Dinah Shore Drive between Plumley and Vaquero Road, south of Cathedral High School (Project 1). This Project 1 was originally estimated at \$240,000.

During the preliminary design phase of Project 1, consultation with HAWK equipment suppliers indicated that recent price reductions may result in Project 1 costing less than the original estimate and it is estimated that grant funds would be left over after construction is complete. Cathedral City Staff requested, and CVAG authorized, that any funds of the Grant contribution remaining may be used for a second HAWK crossing project (Project 2).

#### DISCUSSION:

The City will be advertising a call for bids for the reconstruction of the pavement at the Dinah Shore and Date Palm Intersection (using SB1 funding) and integrate additional roadway reconstruction of the Dinah Shore roadway between Date Palm Drive and the western city limits. This reconstruction work will require the removal of an existing, in-pavement lighted, mid-block pedestrian crossing at the intersection of Via de Anza and Dinah Shore Drive. In the City's past experience with these type of in-pavement crosswalk systems, when roadway reconstruction occurs, the existing in-pavement

equipment is unsalvageable and needs replacing.

Staff has determined that the installation of the HAWK System at this location (Project 2) will provide additional safety at this pedestrian crossing location and value over the long term as future roadway paving will not affect the system.

The City has an annual on-call Traffic Engineering Services Agreement (Agreement) with Webb to provide annual on-call Traffic Engineering Services, that is typically bid out biennially (one year with one-year extension option). To commence the Grant work and stay ahead of the Dinah Shore roadway reconstruction work, Engineering Staff is recommending that the City Council approve a Task Order under the Agreement with Webb in the amount of \$35,000 to prepare plans, specifications and cost estimates for pedestrian hybrid beacons (HAWK System) at Project 1 and Project 2.

# **FISCAL IMPACT:**

Funding for this Task Order will come from the CVAG grant of up to \$180,000 (75%) and matching City Traffic Safety Funds of \$60,000 (25%).

## **ATTACHMENTS:**

None



# **Agenda Report**

**City Council** 

**MEETING DATE: 4/25/2018** 

#### TITLE:

Introduce First Reading of an Ordinance amending Section 3.12 and eliminating Section 3.30 of the Cathedral City Municipal Code - Contracts and Purchasing

#### FROM:

Tami E. Scott, Administrative Services Director

#### **RECOMMENDATION:**

Staff recommends the City Council introduce and give first reading by title only to an Ordinance amending Section 3.12 and eliminating Section 3.30 of the City's Municipal Code as Contracts and Purchasing.

#### **BACKGROUND:**

As part of the adoption of the City Charter by Cathedral City voters, the City is exempt from the provisions of the California Public Contract Code. This exemption shall not prohibit the City Council from subsequently adopting any section, article, chapter, or part of the California Public Contracts Code in whole or in part for the City's own use.

The City Charter states the City shall have the power to establish standards, procedures or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work and use of alternative contracting and project delivery methods, including without limitation, design-build, public private partnerships, construction manager at risk, best value procurement, prequalification of bidders, and similar methods. The City shall have the power to perform any work of improvement by use of its own forces and is not required to contract for the construction of public improvements or to award contracts for such work to the lowest responsible bidder. The City may also contract with other public agencies for the construction of works of public improvement.

The City shall have the power to accept gifts and donations, including donations of material and labor, in the construction of any public works project.

The City shall have the power to enter into project labor agreements with applicable labor unions and trade associations for City public works projects having an estimated cost in excess of five million

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dollars. Any private project with an estimated cost in excess of five million dollars receiving City financial assistance shall enter into a project labor agreement with applicable labor unions and trade associations.

As it relates to Purchasing, the City shall have the power to establish standards, procedures, rules or regulations related to the purchasing of goods, property, or services, including, but not limited to, the establishment of local preferences, and award of vendors on the basis of best value.

As a result of the implementation of the City Charter, city staff has worked with the City Attorney's office to update our municipal code to align with today's needs.

#### **DISCUSSION:**

At the April 11, 2018 Study Session, Council received a presentation and provided feedback as to the overall purpose for the re-establishment, re-naming and updates to chapter 3.12 and the elimination of section 3.30 of the City's Municipal code as a result the City becoming a Charter City. presented and discussed in the 4/11/18 meeting, currently there is no provision in the old chapters that reflect Federal Purchasing requirements, which is required and must be adopted by June 30, 2018. The re-naming of chapter 3.12 from "Purchases" to "Contracts and Purchasing" is to better reflect the chapter's contents and topics covered. The elimination of chapter 3.30 is due to combining this information in the new chapter 3.12. Also, in 1991, the City elected to participate in the California Uniform Public Construction Cost Accounting Act, which memorializes formal and informal bidding processes to include dollar limits, many of which were not clearly incorporated into the former municipal code. As a Charter City, with the ability to establish our own policies, we have attempted to stay consistent with some of the former processes while at the same time update dollar amounts to be more reflective of today's needs. As such, the new Chapter 3.12 has been rearranged into 6 distinct parts based on new and updated information. It defines the contract procurement policies, procedures and requirements for public works projects, general services, professional services, equipment, materials, supplies and other tangible items ("goods"), and any other similar contracts involving the expenditure of public funds in exchange for items or services of value to the City. The chapter establishes the contracting authority of the City Council, City Manager, and the purchasing agent. The purpose is to foster and encourage the use of best management practices in contracting; to ensure quality and efficiency in the procurement of goods and services at the lowest cost commensurate with the quality needed; to provide for a fair and equitable procurement process utilizing standardized solicitation procedures; and to maintain honesty and integrity in the procurement process. In addition, Section 3.12.12 has been re-worded to reflect more of a "best value" approach to the sealed bid process and Section 3.12.19 (D) has been increased from the proposed \$75,000 to \$100,000 for public projects performed by city employees.

# **FISCAL IMPACT:**

None

#### **ATTACHMENTS:**

Ordinance

**File #:** 2018-137 **Item No:** 5.D.

ONDINANCE NO.	ORD	INANCE	NO.	
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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY AMENDING CATHEDRAL CITY MUNICIPAL CODE CHAPTER 3.12 "PURCHASES" RELATED TO PURCHASING PROCEDURES AND RENAMING THE CHAPTER "CONTRACTS AND PURCHASING" AND REPEALING CHAPTER 3.30 "INFORMAL BIDDING PROCEDURES"

WHEREAS, Chapter 3 of Title 3 of the Cathedral City Municipal Code established the purchasing system and standards for the City; and

**WHEREAS**, the City Council desires to revise the purchasing system to streamline purchases, improve flexibility, ensure consistency with federal requirements for emergency purchases, modify the local preference program, and establish procurement ethical standards; and

**WHEREAS,** the City Council finds that this Ordinance furthers the public welfare by improving efficiencies in the procurement process while maximizing the use of public funds.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES ORDAIN AS FOLLOWS:

# **SECTION 1. AMENDMENTS TO CODE.**

- A. Chapter 3.12. of the Cathedral City Municipal Code is amended in its entirety to read as shown in Exhibit "A" hereto.
- B. Chapter 3.30 of the Cathedral City Municipal Code is hereby repealed.

#### **SECTION 2. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action of competent jurisdiction or by reason of any preemptive legislation, the remaining provision, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

#### **SECTION 3. EFFECTIVE DATE**

This ordinance shall take effect thirty (30) days after its second reading by the City Council.

# **SECTION 4.** CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

The foregoing Ordinance was app ty Council held on	roved and adopted at a meeting of the, 2018 by the following vote:
AYES: NOES: ABSTAIN: ABSENT:	
	Stan Henry, Mayor
ATTEST:	
Gary Howell, City Clerk	
APPROVED AS TO FORM	
Eric Vail, City Attorney	

## **EXHIBIT "A"**

# TITLE 3 – REVENUE AND FINANCE Chapter 3.12 CONTRACTS AND PURCHASING

#### PART 1 - GENERAL

# Section 3.12.10. Purpose.

This chapter defines the contract procurement policies, procedures and requirements for public works projects, general services, professional services, equipment, materials supplies and other tangible items ("goods"), and any other similar contracts involving the expenditure of public funds in exchange for items or services of value to the City. This chapter establishes the contracting authority of the City Council, City Manager, and the purchasing agent. The purpose of this chapter is: to foster and encourage the use of best management practices in contracting; to ensure quality and efficiency in the procurement of goods and services at the lowest cost commensurate with the quality needed; to provide for a fair and equitable procurement process utilizing standardized solicitation procedures; and to maintain honesty and integrity in the procurement process.

# Section 3.12.020. Scope.

- A. Contracts for public works projects, general services, and professional services, and contracts or purchase orders for goods, shall be solicited and awarded pursuant to the procedures contained in this chapter.
- B. The solicitation or award policies, procedures and requirements contained in this chapter shall not apply to the following:
  - Subdivision agreements, improvement agreements, development agreements and other land use contracts entered between the City and property owners or developers pursuant to other parts of this municipal code;
  - 2. Franchises and franchise agreements;
  - 3. Contracts between the City and other public entities and public utilities for the City's provision of services to the other entities and utilities:
  - 4. Transactions involving the acquisition, assignment and disposal of interests in real property; and

5. Agreements to provide funds pursuant to the human services resource allocation process or community development block grant program.

# Section 3.12.030. Council contract policies adopted by resolution.

City Council may from time to time adopt by resolution policies related to contract solicitation and award procedures and requirements. The policies may include, without limitation, policies addressing local boycotts, protest procedures, and price preferences for use of recycled or sustainable goods and for local businesses. The policies shall not conflict with, but may be in addition to, any provisions of this chapter. City Council policies shall be considered and implemented in the solicitation and award of contracts made under this chapter.

# Section 3.12.040. Centralized purchasing.

Centralized purchasing shall provide for efficient procedures for the purchase of goods and services; to acquire goods and services at the lowest possible cost commensurate with quality needed; to exercise positive financial control over purchases as provided by the City Charter; and to ensure the quality of such purchases. Centralized purchasing shall operate as a component of the finance department.

# Section 3.12.050. Purchasing agent.

The position of purchasing agent, who may also be known as the "purchasing officer," shall be designated by the Finance Director. The duties of the purchasing agent may be combined with those of any other office or position. The purchasing agent shall have the following duties and authority:

- A. Purchase or contract for goods and services required by any using department in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the purchasing agent shall adopt for the internal management and operation of the purchasing function and such other rules and regulations as prescribed by the City Council or the City Manager;
- B. Negotiate and recommend execution of contracts for the purchase of goods and services;
- C. Act to procure for the City the needed quality in goods and services at the least expense to the City;
- D. Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;

- E. Prepare and recommend to the City Council rules governing the purchase of goods and services for the City;
- F. Prepare and recommend revisions and amendments to the purchasing rules;
- G. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- H. Prescribe and maintain such forms as are reasonably necessary for the operation of this chapter and other rules and regulations;
- I. Supervise the receipt and inspection of goods purchased to ensure conformance with specifications;
- J. Supervise the transfer of surplus or unused goods between departments as needed and the sale of all goods that cannot be used by any department or have become unsuitable for city use;
- K. Maintain an approved vendors list, vendors' catalogue file and records needed for the efficient operation of the purchasing function;
- L. Encourage the standardization of similar goods used by the various city departments; and
- M. Determine the regulations and procedures in this chapter are followed and implemented.

# Section 3.12.060. Exemptions from centralized purchasing.

The City Manager may authorize, in writing, any department to purchase specified goods independently of the centralized purchasing division of the finance department; however, such purchases shall be made in conformity with the procedures established by this chapter.

#### Section 3.12.070. Purchase orders.

Purchases of goods and every contract for the performance of services and public works projects shall be made only by purchase orders, unless otherwise authorized by the City Manager or any rules and regulations adopted by the City Council pursuant to this chapter. Except as otherwise provided in this chapter, no contract shall be deemed to be an authorization to proceed with work unless accompanied by a properly authorized and executed purchase order nor shall any vendor or contracting party be authorized to perform any service, perform any public works project, or provide any goods without first receiving a properly

authorized and executed purchase order issued by the purchasing agent or other authorized person upon verification of sufficient unencumbered appropriation balance. The Finance Director shall have the authority to set a minimum dollar threshold for which a purchase order is required; however, said threshold shall not exceed the minimum bid limit as provided in this chapter.

# Section 3.12.080. Open (standing) purchase orders.

Notwithstanding any other provisions herein, the purchasing agent may issue open (standing) purchase orders for goods or services as needed to support ongoing city operations and support various city departmental functions. The open (standing) purchase order must establish a maximum dollar amount of expenditure for the contract or budget line item.

# Section 3.12.090. Contract types.

- A. <u>Public works contract:</u> A public works contract includes a contract paid for in whole or in part from public funds for the construction, alteration, repair, improvement, reconstruction or demolition of any public building, facility, street, sidewalk, park or open space improvement, or other public improvement.
- B. <u>Contract for goods:</u> A contract for goods includes a contract or purchase order for the purchase of supplies, materials or equipment, including, without limitation, office supplies, janitorial supplies, furnishings, equipment, machinery, tools, vehicles, computer hardware and software and other personal property, materials or goods. A contract for goods may include labor incidental to the purchase of goods, including any set-up, installation and testing services.
- C. <u>General services contract:</u> A general services contract includes a contract providing for work, labor or services not requiring specialized experience, knowledge or training with or without the furnishing of goods incidental to the provision of services, including, without limitation, contracts for:
  - 1. Maintenance of public buildings, streets, parks and other public improvements;
  - Repair, modification and maintenance of equipment or other goods;
  - 3. Licensing, installation and maintenance of or relating to information technology property, goods and services, including, without limitation, computer hardware and

- software, and including the provision of data storage services, unless the information technology services would require specialized certification, expertise, knowledge, or training;
- Janitorial services, uniform cleaning, tree trimming, street sweeping, power washing and landscape maintenance; and
- 5. Leasing or licensing of goods and other personal property for use by the city.
- D. Professional services contract: A professional services contract includes a contract for services involving the exercise of professional discretion and independent judgment based on specialized certification, knowledge, expertise or training. These services may include, without limitation, those provided by accountants, actuaries, auditors, appraisers, architects, attorneys, engineers, financial advisors, information technology experts, instructors, and environmental and land use planners.
- E. <u>Emergency contract:</u> A contract for goods and services necessary to protect the public health, safety, and welfare in the event of an emergency. An emergency means and includes an urgent unforeseen event threatening life, property, or the general public health, safety and welfare, included, without limitation, an emergency declared by the Federal Emergency Management Agency. The City Manager is authorized to determine an emergency exists without further declaration by City Council.

#### PART 2 – PURCHASING OF GOODS AND SERVICES

#### Section 3.12.100. Bidding.

Purchases of goods and services shall be by bid procedures. Bidding may be dispensed with under conditions stated in this chapter.

# Section 3.12.110. Local vendor preference.

- A. <u>Local Preference Option:</u> The purchasing agent may, when seeking bids for goods, notify bidders the bids will be evaluated in a manner that gives preference to local vendors as provided for in this section. The local preference option shall not be exercised unless notice of such option was given in the solicitation.
- B. <u>Preference to Local Vendors:</u> A solicitation for goods may include notice that, if the bid of a local vendor, is no more than five percent

higher than the otherwise lowest bid, the purchasing agent may accept the local vendor's bid on finding it is in the best interest of the city. A local vendor is defined as a vendor that pays sales taxes from a Cathedral City address so that one percent of the net sales price will be remitted by the state of California to the City.

C. Preference to Coachella Valley Vendors: The solicitation may also include notice that, if the bid of a Coachella Valley vendor is no more than three percent higher than the otherwise lowest bid and a local vendor's bid has not been accepted under paragraph B, the purchasing agent may accept that Coachella Valley vendor's bid on a finding it is in the best interests of the city. A Coachella Valley vendor is defined as a vendor that has a valid physical business address, excluding post office boxes, located within one of the nine incorporated cities of the Coachella Valley or an unincorporated area of Riverside County within the boundaries of the Coachella Valley Association of Governments. Furthermore, the business has operated or performed business on a day-to-day basis for at least six (6) months prior to the bid opening date, and holds a valid business license by a jurisdiction located in the Coachella Valley.

# Section 3.12.120. Formal (sealed) bid procedure.

Except as otherwise provided in this chapter, purchases of goods and services of an estimated value greater than seventy-five thousand dollars (\$75,000) shall be by formal sealed written competitive bids. Awards for such expenditures shall be made by the City Council to the lowest responsive and responsible bidder pursuant to the formal bid procedure prescribed in this section unless the contract is being awarded based on the best value to the City as provided for in Section 3.12.180. The determination of "lowest responsive and responsible bidder" shall be at the discretion of the City Council pursuant to findings and recommendations presented by the purchasing agent at the time of award of contract, and should account for the local vendor preference.

- A. <u>Budget Verification:</u> Prior to bid solicitation, the purchasing agent shall confirm the requested purchase is identified in the currently adopted biennial budget. For items not identified in the currently adopted biennial budget, the requesting department shall be required to receive City Council approval prior to bid selection.
- B. <u>Bid Specifications:</u> Bid specifications shall be prepared and include the criteria that must be met to be considered the lowest responsive and responsible bidder.
- C. <u>Notice Inviting Bids:</u> Notices inviting formal bids shall be published at least ten days prior to the date of opening of the bids. Notices

shall be published at least once in a newspaper of general circulation in the city. In addition, the purchasing agent shall also solicit formal sealed bids from responsible suppliers whose names are on the approved vendors list, or who have made written request their names be added thereto. The purchasing agent shall advertise the pending formal purchases by posting a notice on the public bulletin board at the city offices. Notice inviting formal bids shall include a general description of the article or service desired, state where bid documents and specifications may be secured, and the time and place for opening bids.

- D. <u>Bond Requirements:</u> The City Council shall have authority to require a faithful performance bond or other bonds before entering into a contract for goods or services. If bonds are required, the form and amount thereof shall be designated in the notice inviting bids.
- E. <u>Formal Bid Opening Procedure:</u> Sealed bids shall be submitted to the purchasing agent and be identified as "bids" on the envelope. The purchasing agent, or designee, shall publicly open all bids at the time and place stated in the public notices. All bids received shall be available for public inspection at the time and place of opening, and thereafter, in the City Clerk's office during regular business hours. Bids must be received prior to the bid opening to be considered.
- F. Rejection of Formal Bids. In its discretion, the City may reject any and all bids presented and cause re-advertising for bids pursuant to the procedure prescribed in this chapter. However, when all bids exceed the authorized budgeted amount, the City Manager may authorize rejection of all bids and authorize rebidding based upon the original specifications or as they may be modified, in accordance with procedures prescribed in this chapter.

## Section 3.12.130. Tie formal bids.

If two or more formal bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of re-advertising for bids, the City Council may choose whichever of the following options it deems to serve the best interest of the City:

- A. Select one bid, giving preference to a business located within Cathedral City; or
- B. Reject all bids and re-solicit for bids; or

C. Reject all bids and authorize negotiation of an agreement between the City and one of the equivalent bidders.

#### Section 3.12.140. No formal bids.

When no formal bids or no responsive bids are received, the purchasing officer is authorized to negotiate for written proposals, and a recommendation shall be presented to the City Manager and award, if any, shall be made in accordance with applicable provisions prescribed in this chapter.

# Section 3.12.150. Open market or informal bid procedure.

- A. Purchases of goods and services of an estimated value in the amount of seventy-five thousand dollars (\$75,000) (or less may be made by the purchasing agent in the open market and without observing the formal competitive bid procedures prescribed in this chapter. Such purchases shall be based on at least three competitive quotations, whenever practical, to the lowest responsive and responsible bidder, unless the purchase is being made based on best value to the city as provided for in Section 3.12.180.
- B. The purchasing agent shall solicit informal bids by written requests to prospective vendors, or by telephone, or by public notice posted on a public bulletin board at the City offices.
- C. The purchasing agent shall keep a written record of all open market purchases and informal bids for a period of one year after placing the order. This record, while so kept, shall be open to public inspection.

## Section 3.12.160. Exceptions to competitive bidding requirement.

Notwithstanding any provision of this chapter to the contrary, the formal and informal bidding procedures and requirements of this part may be dispensed with in any of the following instances:

- A. When the commodity can be obtained from only one vendor;
- B. The City Manager may authorize the purchase of goods and services where an emergency is deemed to exist and it is determined the public health, safety or welfare would be threatened if the normal procedure were followed. Emergency purchases of seventy-five thousand dollars (\$75,000) or more shall be submitted to the City Council for ratification at the next regular council meeting after the purchase is authorized;

- C. Unless otherwise provided by state or federal law, the city council may authorize the execution of contracts for general services, professional and consultant services without observing the bidding requirements provided in this chapter.
- D. Unless otherwise provided by state of federal law and provided there exists an unencumbered appropriation in the fund account against which the expense is to be charged, the city manager may enter into a contract for goods, general services or professional and consulting services without observing the bidding procedure in this chapter where the amount of the contract or purchase does not exceed the amount of seventy-five thousand dollars (\$75,000).
- Ε. Any agreement involving acquisition of goods and services entered into with another governmental entity, or through any advantageous governmental contract approved by the City Council, or to the purchase of election supplies; or to purchases from a vendor or manufacturer which, through the city's bidding procedure, or through the competitive bidding procedures of governmental entity in the state of California, has established a price at which such a vendor or manufacturer is willing to sell to the City. To avail the city of the benefit of the rate established by other entities' bidding procedures, that other entity's bidding procedure must have received more than one responsive bid, and the bid award must have occurred within one year prior to the City's issuance of a purchase order.
- F. Secondhand, previously-owned or used merchandise may be purchased without competitive bidding under procedures established by the City Manager, which assure a variety of sources are considered, when feasible. For any proposed purchase, the cost of which will be exceeding seventy-five thousand dollars (\$75,000.00), approval of the utilization of such process by the City Council shall be required in advance.

#### Section 3.12.170. Regulations regarding selection of contract services.

The City Council shall by resolution prescribe any additional procedures, rules and regulations governing the solicitation, selection and award of proposals or bids for the furnishing of personal services or professional or consulting services or for other contractual services. Such procedures, rules and regulations shall have the dual purpose of obtaining both the highest quality and most cost-effective contractual services. Local preference may be given in accordance with this chapter, as allowed for by state and federal law.

#### Section 3.12.180 Best Value Criteria.

The city may opt to award a contract subject to formal or informal procedures under Sections 3.12.120 or 3.12.150 based on the best value provided the city rather than the lowest responsive and responsible bidder. The determination as to which methodology will be used shall be made prior to the publication of solicitation materials by the city, and the city may reserve the right to use either methodology in its solicitation materials.

Where a contract may be awarded based on the best value to the city, in determining the vendor that will provide the best value to the city consideration is to be given to quality and performance of the goods and services to be provided by the vendor. Criteria for determining the best value may include but not be limited to the following:

- A. The cost of the goods and nonprofessional services;
- B. The ability, capacity, and skill of the vendor to perform the contract and to provide the goods and nonprofessional services requested;
- C. The ability of the vendor to provide the goods and nonprofessional services requested promptly or within the time specified, without delay or interference;
- D. The ability of the vendor to demonstrate the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform the contract;
- E. The character, integrity, reputation, judgment, experience, and efficiency of the vendor;
- F. The quality of vendor's performance on previous purchases or contracts with the City;
- G. The ability of the vendor to provide future maintenance, repair parts, and services for the use of the goods and supplies, equipment, or materials purchased; and
- H. The ability of the vendor to demonstrate its prior, current, and continued compliance during the contract term with all applicable federal, state, and local laws, statutes, ordinances and all lawful orders, rules, and regulations promulgated thereunder.

#### **PART 3 – FEDERAL REQUIREMENTS**

# Section 3.12.190. Regulations for the procurement of property or services stemming from federal aid.

A. This section shall apply to the awarding of sub-grants and contracts by the City stemming from federal grants to the City. This section shall have the same application on the awarding of sub-grants and contracts by the City stemming from state, county or other non-federal government entity grants originating as federal grants.

#### B. Procurement Standards.

- The City shall maintain a contract administration system which ensures contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- 2. The City shall maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer or agent of the City shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - a. The employee, officer or agent;
  - b. Any member of his or her immediate family:
  - c. His or her partner; or
  - d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in or a tangible personal benefit from a firm considered for award.
- 3. The City's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Such a conflict will not arise where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. The City's standards of conduct provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the City.
- 4. The City shall not enter into a contract with a non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe, unless the non-Federal

- entity maintains written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean due to relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- 5. The City shall avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economic purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- The City shall consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- 7. The City shall consider using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- 8. The City shall consider using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure its essential function is provided at the overall lower cost.
- 9. The City shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
- 10. The City shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.
- 11. The City shall use time and material type contracts only:

- a. After a determination is made that no other contract is suitable; and
- b. If the contract includes a ceiling price the contractor exceeds at their own risk.
- 12. The City alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims. These standards do not relieve the City of any contractual responsibilities under its contracts.

# C. Competition.

- The City will conduct procurement transactions in a manner providing full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.
- 2. The City shall conduct procurements in a manner prohibiting the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 3. The City shall have written procedures for procurement transactions. These procedures will ensure that all solicitations:
  - a. Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its

intended use. Detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

- b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 4. The City shall ensure prequalified lists of persons, firms or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The City shall not preclude potential bidders from qualifying during the solicitation period.
- D. <u>Methods of Procurement to be Followed.</u> The City shall use one of the following methods of procurement:
  - 1. Procurement by Micro-Purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and adjusted periodically for inflation. As of the date of this ordinance, the micro-purchase threshold is \$3,500.00.
  - 2. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and periodically adjusted for inflation. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. As of the date of this ordinance, the simplified acquisition threshold is \$150,000. For purchases exceeding seventy-five thousand dollars (\$75,000.00), City Council approval is required.
  - 3. Procurement by Sealed Bids (Formal Advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or

unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

- a. For sealed bidding to be feasible, the following conditions should be present:
  - (1) A complete, adequate, and realistic specification or purchase description is available;
  - (2) Two or more responsible bidders are willing and able to compete effectively for the business; and
  - (3) The procurement lends itself to a firm-fixedprice contract and the selection of the successful bidder can be made principally based on price.
- b. If sealed bids are used, the following requirements apply:
  - (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
  - (2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;
  - (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
  - (4) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
  - (5) If there is a sound documented reason, any or all bids may be rejected.
- 4. Procurement by Competitive Proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or costreimbursement type contract is awarded. It is generally used

when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals shall be publicized and identify all evaluation factors including relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- b. Proposals will be solicited from an adequate number of qualified sources;
- c. The City shall conduct technical evaluations of the proposal received and for selecting awardees;
- d. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e. The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- 5. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances applies:
  - a. The item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in a written request from the City; or
  - d. After solicitation of multiple sources, competition is determined inadequate.

- 6. Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms.
  - a. The City shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible.

# b. Affirmative steps include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists:
- (2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce: and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections 6.b.(1) through (6) of this section.

# 7. Contracts Cost and Price.

- a. The City shall perform a cost or price analysis in every procurement action exceeding the simplified acquisition threshold including contract modifications. The method and degree of analysis will be dependent on the facts surrounding each procurement situation. As a starting point, the City shall make independent estimates before receiving bids or proposals.
- Costs or prices based on estimated costs for contracts under the Federal award will be allowable only to the extent that costs incurred or cost estimates included in

negotiated prices would be allowable for the City under Subpart E – Cost Principles of Title 2, Subtitle A, Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

c. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

# 8. Federal Awarding Agency or Pass-Through Entity Review.

- a. The City shall make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for purchase.
- b. The City shall make available upon request, for the Federal awarding agency or pass-through entity preprocurement review, procurement documents, such as requests for proposal or invitations for bids, or independent cost estimates when:
  - (1) The City's procurement procedures or operation fails to comply with the procurement standards of Title 2, Subtitle A, Part 200, Subsection 200.324;
  - (2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - (3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
  - (4) The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (5) A proposed modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- c. The City may be exempted from the pre-procurement review in subsection 8.b. above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards set forth

in Title 2, Subtitle A, Part 200, or the City self-certifies compliance with such standards if self-certification is permitted by the Federal awarding agency or pass-through entity.

- 9. <u>Bonding Requirements.</u> For public projects, the City shall require bid guarantees, performance bonds, and payment bonds consistent with Title 2, Part 200, Section 200.325 of the Code of Federal Regulations.
- 10. <u>Contract Provisions.</u> The City's contracts shall contain the provisions in Appendix II to Title 2, Subtitle A, Part 200 Contract Provisions for non-Federal Entity Contracts Under Federal Awards, as applicable.

#### PART 4 – PUBLIC WORKS CONTRACTS

#### Section 3.12.200. Public works contracts.

The following procedures shall govern the award of contracts for public works:

- A. <u>Public works contracts of \$250,000 or less.</u> Public works contracts, of two hundred fifty thousand dollars (\$250,000.00) or less may be let to contract by informal bidding procedures as set forth in part 2 of this chapter.
- B. Public works contracts more than \$250,000. The bidding of public works contracts involving an expenditure of more than two hundred fifty thousand dollars (\$250,000.00) shall comply with the formal bid procedures as set forth in part 2 of this chapter. Prior to bid solicitations, the project plans and specifications for public works projects in this category shall be approved by City Council.
- C. <u>Award of contract.</u> The award of a contract for a public works project involving the expenditure of more than two hundred fifty thousand dollars (\$250,000.00) shall be made by the City Council to the lowest responsive and responsible bidder. The award of a contract for a public works project involving the expenditure of two hundred fifty thousand dollars (\$250,000) or less may be made by the City Manager to the lowest responsive and responsible bidder.
- D. Public projects of one hundred thousand dollars (\$100,000.00) or less may be performed by the employees of the City by force account, by negotiated contract or by purchase order.

#### PART 5 – DESIGN BUILD CONTRACT PROCUREMENT

# Section 3.12.210. Design-build contract procurement procedures.

- A. <u>Purpose and intent.</u> The purpose of this section is to provide definitions and guidelines for the award, use and evaluation of design-build contracts. The City may elect to utilize the design-build procurement procedures in this part in lieu of any other applicable procedures in this chapter.
  - B. <u>Definitions.</u> All defined terms in this section appear in italics. For the purposes of this section, the following definitions apply:
    - Design-build means a public works contract procurement method in which both the design and construction of a project are procured from a single entity. Design-build also includes projects where in addition to design and construction, other functions may be added including, but not limited to, construction management, inspection, soils/materials testing financing, operating and/or maintenance.
    - Design-build entity means a partnership, corporation, or other legal entity able to provide appropriately licensed contracting, architectural and engineering services as needed.
    - 3. Design-build entity member includes any person who provides licensed contracting, architectural, or engineering services on behalf of the design-build entity.
  - C. <u>Design-build procurement.</u> For purposes of this section only, prior to procuring a design-build public works contract, the City shall prepare a request for a proposal, bid information and performance specifications setting forth the scope of the project that may include, but is not limited to, size, type and desired design character of the project and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies and other information deemed necessary to adequately describe the City's needs. The performance specifications shall be prepared by a design professional designated by the City.
  - D. <u>Notice of availability.</u> The notice of availability shall set a date for the opening of proposals and distinctly state the nature and scope of the project to be constructed. At least ten days before

the date of opening the proposals, the notice of availability shall be posted on the City's website and in at least one public place in the city that has been designated for the posting of public notices.

- E. Any architectural firm, engineering firm, specialty consultant or individual retained by the City to assist in the development of criteria or preparation of the request for proposals shall not be eligible to participate in the competition with any design-build entity, nor take part in the ranking of proposals during the selection committee process.
  - F. <u>Selection committee.</u> The City Manager shall appoint a selection committee to review and to rank the proposals of the design-build entities. The selection committee shall use the evaluation criteria set forth in subsection (G) or (H) of this section and in the request for proposal. The selection committee shall be comprised of one representative from the finance department, three employees from the department responsible for the project, and one representative from a department other than finance or the responsible department.
  - G. <u>Selection method for design-build projects with an estimated value up to \$1,000,000.</u> A design-build competition based on performance, specifications and criteria set forth by the City in the request for proposals.
    - 1. Criteria used may include, but not be limited to:
      - a. An evaluation of overall quality, capability, resource availability and financial stability of the firm.
      - b. An evaluation of references provided with respect to responsiveness, quality of work, timeliness and overall performance.
      - c. An evaluation of the firm and/or project manager's ability and experience in providing the service offered, including: experience with local government, scope of services covered, length of time involved, level of client satisfaction, cost/benefits relationship and relative success.

- d. An evaluation of the experience, training and qualifications of the personnel the firm will be committing for assignments on the proposed project.
- e. Consideration of items such as proposed design approach, initial and/or life-cycle costs, project features, financing, quality, capacity, schedule, and operational and functional performance of the facility. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the request for design-build proposals.
- f. The extent to which the firm's proposal meets the technical criteria and methodology requested.
- g. Analysis of the cost relative to the firm's ability to meet the specifications and criteria set forth in this subsection and in the request for proposal.
- h. Whether the cost as provided in the bid is guaranteed firm, evidenced in writing and signature by an authorized representative of the firm.
- 2. Depending on the number of proposals received by the City, the selection committee may develop a "short-list" of the top ranked design-build proposals.
- 3. Depending on the number of proposals and/or complexity of the project, the selection committee may require the "short-listed" design-build entities to complete an interview/presentation to the selection committee to establish a final ranking.
- 4. The selection committee will then begin negotiations with the top ranked design-build entity. The negotiations may include but are not limited to project cost, scope, and schedule. If negotiations are not successful, negotiations will cease with the top ranked design-build entity, and negotiations may begin with the second ranked designbuild entity.
- 5. Award shall be made by the City Council to the designbuild entity whose proposal is judged as one that best

serves the interests of the City by meeting the criteria set forth in this subsection and in meeting the requirements established in the request for proposal.

- H. <u>Selection method for design-build projects with an estimated value over \$1,000,000</u>. The selection committee may choose to establish a competitive prequalification process that specifies the manner and means used to submit a statement of qualifications as well as recommends the manner a shortlist will be established, and an award made.
  - 1. Statements of qualifications evaluation criteria may include, but are not limited to, submission of the following documents:
    - a. That the design-build entity is a licensed contractor, and holds an architect and engineering license or subcontracts that license.
    - b. That the design-build entity members have completed projects of similar size, scope, building type, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the project.
    - c. A proposed project management plan establishing that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.
    - d. That the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as financial statements.
    - e. That the design-build entity will comply with all other provisions of law applicable to the project.
    - f. That the design-build entity or its members have not had a surety company finish work on any project within the past five years.
    - g. That the design-build entity provides information for the past five years for the following:
      - (1) Civil or criminal violations of the contractors' state license law against any member of the design-build entity member.

- (2) Any conviction of any member of the designbuild entity of submitting a false or fraudulent claim to a public agency.
- (3) Civil or criminal violations of federal or state law governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements against any member of the designbuild entity.
- (4) Civil or criminal violations of federal or state law against any design-build entity member governing equal opportunity employment, contracting or subcontracting.
- (5) Technical approach and team expertise.
- (6) Design and construction experience.
- h. The overall technical qualifications of the design build entity and the individual expertise of key personnel proposed for the project.
- Previous design and construction experience on projects of similar size and scope, as well as the experience of their key personnel assigned to this project.
- 2. Those design-build entities recommended to be placed on the shortlist, shall receive the request for proposals.
- 3. Award shall be made by the City Council to the lowest qualified design-build entity.
- 4. If the selection committee chooses not to utilize the prequalification process, the design-build entity shall be selected and awarded pursuant to the process set forth in this chapter.
- I. <u>Rejecting Bids.</u> Right to reject any and all bids. Nothing in this chapter requires the City to accept any bid and the City hereby reserves the right to reject any and all bids.
- J. <u>Subcontractor listing.</u> The City recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impractical for the design-build entity to list all subcontractors at the time of the award.

- 1. It is the intent of the City to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that affords protection for subcontractors while enabling design-build projects to be administered in an efficient fashion.
- 2. The following requirements apply to subcontractors, licensed by the state, that are employed on design-build projects undertaken pursuant to this section.
  - a. The design-build entity in each design-build proposal shall specify the construction trades or types of subcontractors that may be named as members of the design-build entity at the time of the award. In selecting the trades that may be identified as members of the design-build entity, the design-build entity shall identify the trades deemed essential in the consideration of the project.
  - b. Subcontracts not listed at time of award shall be performed or awarded by the design-build entity in accordance with a bidding process set forth in the respective request for proposals or bid invitation. The design-build entity shall furnish to the City documentation to verify that all subcontracts not listed at the time of award were subsequently awarded in accordance with the respective request for proposal or bid invitation. All subcontractors that are listed at the time of award, or subsequently in accordance with the respective request for proposal or bid invitation shall be afforded the protection of Section 4107 of the California Public Contract Code.

#### PART 6 – DISPOSITION OF SURPLUS PROPERTY

# Section 3.12.220. Surplus supplies and equipment.

All using departments shall submit to the purchasing agent, at such times and in such forms as prescribed, reports showing supplies and equipment which are no longer used or which have become obsolete and worn out.

# Section 3.12.230. Surplus supplies – Trade-ins.

The purchasing agent shall have authority to exchange for or trade in any supplies and equipment which cannot be used by any department or which have become unsuitable for city use for any new supplies and equipment.

## Section 3.12.240. Surplus supplies – Sale.

The purchasing agent shall have authority, subject to approval of the City Manager or designee, to dispose of surplus supplies or equipment by auction or by sale or otherwise after receiving bids or proposals which, in his or her judgment, provide the maximum return to the City.



## **Agenda Report**

City Council

**MEETING DATE: 4/25/2018** 

TITLE:

Placement of Betty Gold Tiron IV Sculpture and Status of East Palm Canyon Median Landscape Project.

### FROM:

Public Arts Commission / Deanna Pressgrove Engineering Department / John Corella

## RECOMMENDATION:

Staff recommends approval of the Public Arts Commission recommendation to place Betty Gold Tiron IV within the East Palm Canyon Median and the allocation of \$13,300 from the public arts fund for the installation and lighting of Tiron IV.

## **BACKGROUND:**

On November 13, 2017, the Cathedral City Public Arts Commission voted unanimously to make a recommendation to City Council to accept Betty Gold Tiron IV Sculpture donated to the City by the Bernstein family.

On November 29, 2017, City Council accepted the donation of Betty Gold Tiron IV Sculpture.

On March 12, 2018, the Public Arts Commission voted unanimously to approve the recommendation to City Council for the placement of Betty Gold Tiron IV within the median along East Palm Canyon and Date Palm and the allocation of public arts fund in an amount not to exceed \$13,300 for the installation and lighting of Tiron IV.

## **DISCUSSION:**

Engineering has the East Palm Canyon Drive Median Landscaping Project out to bid. Request for approving the contract to construct the Project will be presented to the City Council in May 2018 and

construction should begin in June 2018.

The beautification of the median will include centralized solar power to energize led lighting, steel agave plants, various rocks and boulders, decorative concrete curbing, decomposed granite areas of various desert colors, concrete stained and scored to match color hues and the foundation for the Betty Gold art piece.

## **FISCAL IMPACT:**

The \$13,300 would be allocated from the public arts fund.

## **ATTACHMENTS:**

None



## **Agenda Report**

City Council

**MEETING DATE: 4/25/2018** 

TITLE:

**American Traffic Safety Contract Renewal** 

FROM:

Travis Walker, Chief of Police

## RECOMMENDATION:

Staff recommends the City Council either renew the current contract between the City of Cathedral City and American Traffic Solutions Inc. at the monthly rate of \$10,500 or in the alternative cancel the contract between the City of Cathedral City and American Traffic Solutions Inc.

## **BACKGROUND:**

The Cathedral City Police Department began its Red-Light Camera program in August 2006, with cameras at the intersection of Date Palm Drive and Ramon Road. After evaluating the cost of the program and the initial reduction in traffic collisions at this intersection, two more intersections were outfitted with cameras in February 2009. The two intersections that were added were Ramon Road and Landau Blvd., and Vista Chino and Date Palm Drive. The initial annual fees for the program was \$179,640, and this price was reduced to \$126,000 per year (\$3,500 a month per camera) upon the renewal of the contract in 2009, and remains set at this amount today.

The contract with American Traffic Solutions is set to renew on June 2, 2018, as part of our second one-year renewal options, as outlined in the 2014 contract.

#### DISCUSSION:

The Red-Light Camera Program has been operational for over ten and a half years now, which provides us with a good historical perspective on the functionality of the system.

The following is three years' worth of data on citations issued:

2015 - 3,212 violations reviewed. 2,310 citations issued.

2016 - 3,150 violations reviewed. 2,890 citations issued.

File #: 2018-149 Item No: 5.F.

2017 - 2,650 violations reviewed. 2,520 citations issued.

We have seen accidents fluctuate at the three intersections over the past three years:

2015 - 91 accidents

2016 - 110 accidents

2017 - 75 accidents

Collectively, the two officers assigned to this program spend an average of 84 hours per month handling the administrative duties associated with managing the Red-Light Camera safety program. These duties include, but are not limited to: Viewing every violation that occurs, completion of the citation process, preparing for court on contested citations, and courtroom testimony. These officers also spend time answering phone inquiries regarding violations, and facilitating the review of violations at the police station. The cost associated with the 84 hours of staff's time translates to \$128,016 a year for the officers to maintain this program. The officer's salaries are funded from the City's General Fund, and, pursuant to the vehicle code are not funded by any revenue generated from citations issued.

Staff sought a legal opinion from the City Attorney to determine if we could have other members of the department's non-sworn staff review violations, issue citations, and represent the city on contested citation in court. The City Attorney's office opined that we should only have sworn staff reviewing violations and issuing citations.

The revenue from the Red-Light Safety Camera violations are deposited into the Traffic Safety Fund, which averages approximately \$260,000 per year. This fund is funded by all fines collected from traffic related fees collected citywide, which includes revenue generated from all traffic-related citations, and fees received from the California Department of Motor Vehicles totaling an average of \$380,000 per year. The funds in this account cannot be used to fund any sworn peace officer positions, but does help fund other traffic safety positions and programs within the city, which includes up to five part-time crossing guards, a traffic consultant and provides resources for traffic and speed studies to name a few.

### **FISCAL IMPACT:**

The annual renewal cost of the American Traffic Solutions contract is \$126,000. There would be an additional financial impact to other city-run traffic safety programs that are funded by the Traffic Safety Fund. The total annual budget in the Traffic Safety Fund is \$342,130.

## ATTACHMENTS:

**File #:** 2018-149 **Item No:** 5.F.

See Attached



June 3, 2014

## **VIA FEDERAL EXPRESS**

Cathedral City Police Department Charles Robinson, Captain Operations Division 68700 Avenida Lalo Guerrero Cathedral City, CA 92234

**RE:** Professional Services Agreement

Dear Captain Robinson:

Enclosed please find a copy of the fully executed Professional Services Agreement. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

Karen Zinn

Paralegal

Encl.

### STANDARD PROFESSIONAL SERVICES AGREEMENT

This Standard Professional Services Agreement which includes the attached Exhibits ("Agreement") is made by and between American Traffic Solutions, Inc., a Kansas corporation authorized to conduct business in California ("ATS"), with its principal place of business at 1330 West Southern Avenue, Tempe, Arizona, and the City of Cathedral City, a municipal corporation located in the County of Riverside, State of California ("Customer") (ATS and Customer individually, a "Party", and collectively, the "Parties"). This Agreement sets forth the terms, conditions and obligations of the Parties.

#### **RECITALS:**

WHEREAS, within the City of Cathedral City there are three (3) existing Axsis<sup>™</sup> Systems for automated traffic enforcement as described in the California Vehicle Code §21455.5 ("Systems"); and

WHEREAS, California Vehicle Code §21455.5(d) and §21455.6(b) authorize Customer to contract for the operation of the Systems subject to certain exceptions set forth therein, including but not limited to, Customer's overall control and supervision of the Systems; and

WHEREAS, ATS represents that it has the exclusive knowledge, possession and ownership of certain equipment, licenses, and processes pertaining to automated traffic enforcement systems, including the "Axsis<sup>TM</sup> System" ("Axsis"), and is specially trained, experienced and competent to perform the professional and technical services required by this Agreement; and

WHEREAS, Customer desires to contract with ATS, on an independent contractor basis, for the operation of the Systems for the purpose of traffic safety in compliance with the provisions of the California Vehicle Code and all other applicable laws and regulations.

The Exhibits attached hereto and incorporated herein by this reference include:

Exhibit A.....SERVICE FEE SCHEDULE Exhibit B....SCOPE OF WORK

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

By signing below, the Parties agree to the terms and conditions of this Agreement together with the attached Exhibits. This Agreement contains the complete and exclusive statement of the agreement between the Parties regarding the rights and obligations set forth herein and replaces any prior oral or written representations or communications between the Parties regarding same. Each individual signing below represents that s/he has the requisite authority to execute this Agreement on behalf of the entity which s/he represents and that all the necessary formalities have been met.

## **ACKNOWLEDGED AND AGREED TO BY:**

AMERICAN TRAFFIC SOLUTIONS, INC.

CITY OF CATHEDRAL CITY

By:

Adam E. Tuton

**Executive Vice President** 

Date

Name/Title

Date

ATTEST:

Name/Title

Date

APPROVED AS TO FORM

Bv:

City Attorney

Date

This Agreement is effective on the date of execution by the last signatory to this signature page ("Effective Date").

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### I. DEFINITIONS

As used in this Agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

- 1. "Approach": One (1) direction of travel on a road or a traffic intersection, including up to four (4) contiguous lanes controlled by up to two (2) signal phases.
- 2. "Camera System" or "Camera": A photo-traffic monitoring device consisting of one (1) camera, strobe, and traffic monitoring device capable of accurately detecting a traffic infraction on up to four (4) contiguous lanes which records such data with one (1) or more images of such vehicle. "Camera System" shall, where the context requires, also include any enclosure or cabinet and related appurtenances in which the equipment is stationed.
- 3. "Change Order Notice": Written notice from Customer requesting changes to the work required to be performed or the addition of products or services to those required to the terms of this Agreement, setting forth in reasonable detail the proposed changes.
- 4. "Change Order Proposal": A written statement from ATS describing the cost of the changes to the work or addition of products or services requested by Customer in a Change Order Notice.
- 5. "Citation": A citation or notice of violation or equivalent instrument issued by a competent state, county or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by Axsis.
- 6. "Fees": The amount payable by Customer to ATS for equipment, services, and maintenance as set forth in Exhibit "A".
- 7. "Help-Line Business Hours": Eight (8) hours per day, Monday through Friday, excluding weekends and holidays.
- 8. "Owner": The owner(s) of a motor vehicle as shown by the motor vehicle registration records of the motor vehicle department or the analogous agency of another state or country.
- 9. "Person" or "Persons": Any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.
- 10. "Project Time Line": The initial schedule and timelines required to begin the implementation of Customer's project, as mutually agreed upon by the Parties.
- 11. "Violation": A failure to obey an applicable traffic law or regulation, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, or operating a motor vehicle without valid insurance.

## **II. GENERAL TERMS AND CONDITIONS**

#### 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.

#### 2. ATS AGREES TO PROVIDE:

The scope of work identified in Exhibit B, Section 1. At any time during the term of this Agreement, Customer may request that ATS perform Extra Work for mutually agreeable additional compensation. As used herein, "Extra Work" means any work which is determined by the Customer 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. ATS shall not perform, nor be compensated for, Extra Work, without written authorization from the Customer.

#### 3. CUSTOMER AGREES TO PROVIDE:

The scope of work identified in Exhibit B, Section 2.

#### 4. TERM:

This Agreement shall commence upon the Effective Date and shall continue for a term of three (3) years. Customer has the option to extend this Agreement for up to two subsequent one-year renewal terms by providing notice to ATS at least thirty (30) days prior to the expiration of the then-current term.

#### 5. ASSIGNMENT:

Neither Party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. However, for business financing purposes, ATS may sell, assign, transfer or convey any interest in this Agreement in whole or in part without the written consent of the Customer, provided that ATS remains the sole entity responsible for the performance of ATS's obligations, and the sole entity with the right to enforce ATS's rights, as set forth in this Agreement. The Parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

### 6. SUCCESSORS, HEIRS AND ASSIGNEES:

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

#### 7. FEES AND PAYMENT:

- 7.1 Customer shall pay for all equipment, services and maintenance based on the fee schedule indicated in the Exhibit "A", Service Fee Schedule 1.
- 7.2 ATS shall invoice the Customer on a monthly basis. Each invoice shall set forth the amount of Fees due for the performance of this Agreement by ATS during the preceding month. The amount set forth in the invoice shall be in accordance with Exhibit A. ATS shall submit invoices under this Agreement to:

Charles Robinson, Captain
Operations Division
Cathedral City Police Department
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Phone: 760-770-0394

- 7.3 Customer shall pay all Fees due ATS as set forth in each invoice within thirty (30) days of receipt of invoice by Customer, provided that the services reflected in the invoice were in accordance with the terms of this Agreement, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement.
- 7.4 Late payments are subject to interest calculated at 1.5% per month on open balances. If Customer is more than sixty (60) days past due on payments to ATS, ATS may exercise any remedies for non-payment of Service Fees by Customer subject to the terms and conditions of this Agreement.
- 7.5 ATS' Fees will be fixed for the first two (2) calendar years, or any portion thereof, of the first term; thereafter, ATS' Fees will increase in January of each year by the greater of (a) two percent (2%)

or (b) the percentage change in the Consumer Price Index for All Urban Consumers ("CPI-U"), US City Average over the previous twelve-month period.

#### 8. INFORMATION AND DOCUMENTS:

- 8.1 ATS will comply with reasonable requests for information received by ATS through operation of the Systems. ATS reserves the right to assess a reasonable fee for such services based on the actual cost incurred by ATS to comply with said requests.
- 8.2 All plans, studies, documents and other writings prepared by and for ATS, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except ATS's internal working notes, internal documents, and proprietary information, shall become the property of the Customer upon payment to ATS for such work, and the Customer shall have the sole right to use such materials in its discretion without further compensation to ATS or to any other party. ATS shall provide, at no additional cost to Customer, such reports, plans, studies, documents and other writings to the Customer upon written request.
- 8.3 ATS 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 the Customer for a minimum period of three years, or for any longer period required by law, from the date of final payment to ATS pursuant to this Agreement.
- 8.4 With the exception of personal identifying information received in connection with Violations by an Owner or other such Persons, ATS shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Customer's City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the Customer for inspection at the Customer's address indicated for receipt of notices in this Agreement when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at ATS's address indicated for receipt of notices in this Agreement. Where the Customer has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of ATS's business, the Customer may, by written request of any of the abovenamed officers, require that custody of the records be given to the Customer and that the records and documents be maintained at the Customer's address indicated for receipt of notices in this Agreement. Access to such records and documents in Customer's custody shall be granted to any party authorized by ATS, ATS's representatives, or ATS's successor-in-interest.

## 9. CONFIDENTIAL INFORMATION:

- 9.1 No information given by ATS to Customer will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by ATS. However, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable.
- 9.2 With the exception of ATS's proprietary information, all ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to ATS in connection with the performance of this Agreement shall be held confidential by ATS. Such materials shall not, without prior written consent of the Customer, be used by ATS for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to ATS which is otherwise known to ATS or is generally known, or has become known, to the related industry shall be deemed confidential.

9.3 ATS shall not use Customer's insignia, name, trademarks, photographs, or any other identifying representation in any publication, advertisement, or other medium without the prior written consent of the Customer.

#### 10. OWNERSHIP OF SYSTEM:

It is understood by the Parties that the Systems are and shall remain the sole property of ATS, unless separately procured from ATS through a lease or purchase transaction. The software, workflow processes, user interface, designs, know-how, and other technologies provided by ATS as part of the Service are the proprietary property of ATS, and all other right, title and interest in and to such items, including all associated intellectual property rights, remain only with ATS. ATS reserves all rights unless expressly granted in this agreement.

#### 11. INDEMNIFICATION:

- 10.1 Indemnification by ATS. Subject to Section 10.3, ATS agrees to defend, indemnify, and hold harmless the Customer and its managers, officers, directors, employees, representatives and successors, permitted assignees and all Persons acting by, through, under, or in concert with them (individually a "Customer Party" and collectively, the "Customer Parties") against any and all claims, actions, proceedings, demands, liabilities, obligations, losses, damages, penalties and judgments, including reasonable attorneys' fees incurred in connection therewith (collectively, "Claims"), which may be imposed on or incurred by any Customer Party arising out of the negligence or willful misconduct of ATS, its employees, contractors or agents, except to the extent arising out of the sole negligence or willful misconduct of any Customer Party.
- 10.2 Indemnification by Customer. Subject to Section 10.3, the Customer hereby agrees to defend, indemnify, and hold harmless ATS and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, representatives and successors, permitted assignees and all Persons acting by, through, under or in concert with them (individually an "ATS Party" and collectively, the "ATS Parties") against any and all Claims which may be imposed on or incurred by any ATS Party arising out of the negligence or willful misconduct of the Customer, its employees, contractors or agents, except (i) to the extent arising out of the sole negligence or willful misconduct of any ATS Party; (ii) any Claim challenging the Customer's use of the Systems or Axsis System, or any portion thereof; or (iv) any Claim challenging the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Systems or Axsis System, or any portion thereof.
- 10.3 Indemnification Procedures. In the event of any Claim in respect of which any Party hereto seeks indemnification from the other, the Party seeking indemnification (the "Indemnified Party") shall give the Party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof; provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased loss, liability, or other actual prejudice directly caused by such failure. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim and no Party shall have the right to enter into any settlement agreement that materially affects the other Party's material rights or material interests without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.
- 10.4 Customer does not, and shall not, waive any rights that it may have for indemnity because of the acceptance by the Customer, or the deposit with the Customer, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

## 11. INSURANCE:

11.1 ATS shall maintain the following minimum scope and limits of insurance:

- 11.1.1 Commercial General Liability Insurance including coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability with a combined single limit of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 completed operations aggregate.
- 11.1.2 Workers' Compensation as required by applicable state law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident. ATS shall at all times maintain Worker's Compensation insurance coverage in the amounts required by law, but shall not be required to provide such coverage for any actual or statutory employee of Customer.
- 11.1.3 Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by ATS with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.
- 11.1.4 Professional Liability Coverage to insure against claims alleging negligent acts, errors or omissions which may arise from ATS's operations under this Agreement with a minimum of \$1,000,000 per claim, and \$2,000,000 aggregate.
- 11.1.5 Customer and its officers and employees, shall be named as additional insured on the comprehensive general liability and auto liability policies provided by ATS under this Agreement.
- 11.1.6 ATS shall require any subcontractors doing work under this Agreement to provide and maintain the same types of insurance coverage, and the same policy limits, that ATS is required to provide by this Agreement, including endorsements.
- 11.1.7 The comprehensive general liability, and auto liability, policies shall be primary insurance as respects Customer, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Customer, including any self-insured retention the Customer may have shall be considered excess insurance only and shall not contribute with it.
- 11.1.8 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Customer, its elected or appointed officers, officials, employees, agents and volunteers.
- 11.1.9 ATS shall have a contractual blanket waiver of subrogation on all of its policies which shall effectively waive the insurer's right of subrogation against the Customer, its elected or appointed officials, officers, employees and agents.
- 11.1.10 Certificates showing ATS is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the Customer within thirty (30) calendar days after the Effective Date of this Agreement.
- 11.1.11 Customer will be notified of any cancellation, reduction, or other change in coverage. ATS shall forthwith obtain substitute insurance in the event of a cancellation. It shall be ATS's responsibility to ensure that Customer receives timely written notice of any cancellation, reduction, or other change in coverage of insurance that is required by this Agreement.
- 11.1.12 The Customer shall be responsible for vehicle insurance coverage on any vehicles driven by Customer employees. Coverage will include liability and collision damage.

## 12. LAW TO APPLY AND VENUE:

This Agreement shall be construed under and in accordance with the laws of the State of California. 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.

#### 13. CHANGE ORDERS:

The Customer may request the addition of any products or services that ATS provides or other changes to the scope of work to be performed under this Agreement by providing a Change Order Notice to ATS. Upon ATS' receipt of the Change Order Notice, ATS shall deliver a written statement describing the cost including time and materials, to the Customer (the "Change Order Proposal"). Following the Customer's receipt of the Change Order Proposal, the Parties shall negotiate in good faith regarding a plan and schedule for implementation of the proposed changes; the time, manner and amount of payment or price increases and any other matters relating to the proposed changes. In the event that any proposed change involves only the addition of equipment or services as currently included in Exhibit A of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit A shall govern. Any failure of the Parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and shall not invalidate the procurement process or this Agreement nor relieve or release ATS or the Customer of any of its obligations under this Agreement. Any Change Order Proposal mutually agreed to by the Parties shall be set forth in a writing executed by both Parties.

## 14. TERMINATION:

- 14.1 This Agreement may be terminated:
  - (i) By mutual written consent of the Parties; or
  - (ii) For Cause, by either Party, where the other Party fails in any material way to perform its obligations under this Agreement. Termination under this subsection for any reason is subject to the condition that the terminating Party notifies the other Party in writing of its intent to terminate, stating with reasonable specificity the grounds therefore, and in the event the reason for termination under this subsection is for default, the other Party fails to cure the default within fourteen (14) calendar days after receiving said written notice.
  - (iii) Without cause, by Customer, upon sixty (60) calendar days' written notice of termination. Upon termination under this subsection, ATS shall be entitled to compensation for services performed up to the effective date of termination. In the event any Cameras are installed after the date of this Agreement which are made subject to this Agreement ("New Camera(s)"), then the City shall pay ATS an early termination fee based on ATS' unamortized equipment and installation costs for the New Cameras, which shall be calculated at \$2,000 per camera for each month remaining in the then-current term.
- 14.2 Upon termination of this Agreement, the Parties recognize that the Customer will have to process Violations in the "pipeline", and that ATS accordingly must assist the Customer in this regard. Accordingly, the Parties shall take the following actions and shall have the following obligations, which survive termination during the wind-down period:
  - (i) The Customer shall cease using any automated traffic enforcement system that Customer has a right to use solely pursuant to this Agreement to capture Violations.
  - (ii) Unless it is unlawful to do so, ATS shall, for a period of ninety (90) days, continue to process all images taken by the Customer before termination and provide all services associated with processing in accordance with this Agreement.
  - (iii) The Customer shall return or allow ATS to recover all provided equipment within a reasonable time not to exceed ninety (90) days.
  - (iv) If ATS recovers the provided equipment, ATS may invoice the Customer for such costs.

#### 15. AMENDMENTS TO THE AGREEMENT:

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

## **16. LEGAL CONSTRUCTION:**

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. This Agreement shall be enforced to the maximum extent possible so as to give effect to the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable herein.

#### 17. PRIOR AGREEMENT SUSPENDED:

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior or contemporaneous understanding, written or oral, between the Parties respecting the rights and obligations of the Parties set forth in this Agreement.

#### 18. NO AGENCY:

ATS is an independent contractor providing services to the Customer and the employees, agents and servants of ATS shall in no event be considered to be the employees, agents or servants of the Customer. This Agreement is not intended to create an agency relationship between ATS and Customer.

#### 19. FORCE MAJEURE:

Neither Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

#### **20. TAXES:**

At the time of execution of this Agreement, it is the understanding of the Parties that ATS' services provided hereunder are not subject to federal, state or local taxes including but not limited to excise, sales, use, property or similar taxes or charges. The Customer agrees to reimburse ATS for any such tax or charge if charged against ATS. If incurred, such taxes or charges may be invoiced at any time.

## 21. NON-LIABILITY OF CUSTOMER OFFICERS AND EMPLOYEES:

No officer or employee of the Customer shall be personally liable to ATS, or any successor in interest, in the event of any default or breach by the Customer or for any amount which may become due to ATS or to its successor, or for any breach of any obligation of the terms of this Agreement.

### 22. 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.

## 23. CUMULATIVE 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.

#### 24. COMPLIANCE WITH LAWS, LICENSING AND PERMIT REQUIREMENTS:

ATS shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of ATS and/or its employees, officers, or board members. ATS represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City of Cathedral City business license.

#### 25. LABOR LAWS:

All work or services performed within the State of California pursuant to this Agreement by contractor, contractor's employees and independent contractors, or contractor's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America. Documentation must be promptly submitted to the Customer at any time, at the request of the Customer, for the purpose of determining whether or not the work or services provided pursuant to this contract are being provided in compliance with this section.

#### 26. WARRANTY:

ATS warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services. The performance of services by ATS shall not relieve ATS from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Customer, when such inaccuracies are due to the fault of ATS.

#### 27. CONFLICTS OF INTEREST:

ATS (including principals, associates and professional employees) covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source or income, interest in real property or investment which would be affected in any manner or degree by the performance of ATS's services hereunder. ATS further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

#### 28. WAIVER:

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. 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.

## 29. 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.

#### 30. NOTICES:

Any notices or demand which, under the terms of this Agreement or under any statute, must or may be given or made by ATS or Customer shall be in writing and shall be given or made by personal service, FedEx, or by United States certified or registered mail to the Parties at the following address. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2<sup>nd</sup>) day after deposit with FedEx or in the United States mail.

Charles Robinson, Captain Operations Division Cathedral City Police Department 68-700 Avenida Lalo Guerrero Cathedral City, California 92234 American Traffic Solutions, Inc. 1330 West Southern Avenue Tempe, Arizona 85282 Attn: Legal

# EXHIBIT A SERVICE FEE SCHEDULE

## 1.0 **Description of Pricing**

Fees are based on per camera and are as follows:

Fees:

\$3,500 per camera/per month for any Cameras installed prior to the Effective Date of this Agreement

<u>Service Fees</u>: Service Fee includes all costs required and associated with one Camera System maintenance and on-going field and back-office operations. Includes red-light camera equipment for a 4-lane approach with up to two (2) signal phases maintenance, violation processing services, DMV records access, First Class mailing of notice of violation with return envelope, lockbox and e-payment processing services, excluding user convenience fee, IVR call center support for general program questions and public awareness program support. This pricing applies to all cameras installed prior to the term of this Agreement.

ATS' monthly fee includes postage for the first class mailing of the 1st notice. Certified mail is extra and will be billed per unit as published by the US Postal Service at http://www.usps.com/prices/extra-services-prices.htm.

2.0 Optional Annual Training Conference: ATS provides a comprehensive user training conference (the "Conference") for active photo traffic safety and enforcement clients. The Conference's main focus is training of the system. Core elements include training on implementation methods and improvements, operational monitoring and improvements, statistical analysis, public relations and technology assessment. The sessions include participation by industry members, industry speakers and panel discussions. The Conference will be held in the Phoenix Metropolitan area. Customer shall be invoiced \$100 per month per attendee and can assign up to three (3) project team members to attend the Conference each year. The \$1,200 fee per attendee will cover travel, accommodations and all related Conference fees.

Check to select the number of Attendees:					
	Three Attendees		One Attendee		
	Two Attendees		None; Customer opts not to attend the Annual Training Conference		

- 3.0 <u>Enhanced Public Relations Services</u>: ATS may provide additional public relations services upon written request by Customer. These services may include advertising, media relations, and public relations consultants. The fee for such services shall be mutually agreed upon by the Parties in writing based on the scope of the public relations services to be provided.
- 4.0 <u>Video Retrieval Fee:</u> ATS shall retrieve up to one (1) 15-minute video per week at no cost to Customer. For all additional video retrievals, the fee shall be mutually agreed upon based on the scope of the request.
- 5.0 <u>California Vehicle Code</u>: Notwithstanding anything to the contrary, ATS shall not receive payment or compensation from any source based on the number of citations generated, or as a percentage of the revenue generated, as a result of operation of any automated traffic enforcement system for Customer, in accordance with the California Vehicle Code §21455.5(h)(1).

## EXHIBIT B SCOPE OF WORK

## 1. ATS SCOPE OF WORK

#### 1.1 ATS IMPLEMENTATION

- 1.1.1 ATS shall provide the services to the Customer as outlined in this Agreement, excluding those items identified in Section 2 titled "Customer Scope of Work". ATS and the Customer understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the Parties shall negotiate in good faith to assign the proper Party the responsibility and cost for such items. In general, if work is to be performed by the Customer, unless otherwise specified, the Customer shall not charge ATS for the cost.
- 1.1.2 ATS shall provide consulting assistance to the Customer, if requested, regarding Site Selection Analysis of any new candidate sites.
- 1.1.3 ATS shall operate each Camera System on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).
- 1.1.4 ATS' in-house Communications Department shall, as requested by Customer, assist Customer with public information content and outreach campaign strategies. Depending upon the mutually agreed-upon strategy, ATS may provide public relations consultants, advertising, or media relations for an additional fee as described in Exhibit A, Service Fee Schedule, if approved by Customer in advance in writing.
- 1.1.5 ATS shall provide a secure website (<a href="www.violationinfo.com">www.violationinfo.com</a>) accessible to Owners who have received Notices of Violation by means of a Notice # and PIN, which will allow Violation image and video viewing. As part of the secure website, ATS will continue to provide a Frequently Asked Questions (F.A.Q.) page. ATS will operate this secure website on a 24-hour basis, barring downtime for maintenance, normal servicing activities, or other unforeseen instances (i.e., acts of God, etc.).
- 1.1.6 ATS shall provide technician site visits to each Camera System, as needed to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wires; and, general system inspections and maintenance.
- 1.1.7 ATS shall take reasonable best efforts to repair a non-functional Camera System within seventy-two (72) business hours of determination of a malfunction, except for those causes of Force Majeure as outlined in the General Terms and Conditions of this Agreement.
- 1.1.8 For any customer using ATS lockbox or e-payment services, ATS shall establish a dedicated demand deposit account.

#### 1.2 ATS OPERATIONS

- 1.2.1 If a warning period is required, ATS shall provide the Customer with a warning period that confirms to the requirements of applicable law.
- 1.2.2 ATS shall provide the Customer with an automated web-based Citation processing system (Axsis) including image processing, first notice printing and mailing of Citation or notice of violation per chargeable event and a mailing of a text only reminder notice, a hearing scheduled letter, a hearing denied letter, an insufficient information letter, and a dismiss letter. Each Citation or notice of violation shall be delivered by First Class mail to the Owner within the statutory period. In the case of a transfer of liability by the Owner,

ATS may also mail a Citation or notice of violation to the driver identified in the affidavit of non-liability or by rental car companies. Costs of certified mailings are priced separately and paid by the Customer for additional compensation to ATS as indicated in Exhibit A.

- 1.2.3 ATS shall apply an electronic signature to the Citation when authorized to do so by an authorized law enforcement officer.
- 1.2.4 ATS may, subject to Customer's approval, seek records from out-of-state vehicle registration databases to use such records to assist with issuing Notices of Violation. Subject to Customer's approval, Notices of Violation may be mailed to the address of the Owner obtained through the DMV, obtained through the National Change of Address (NCOA) database provided by the United States Postal Service, or obtained through other means approved by Customer. ATS reserves the right to charge Customer for outof-state DMV look-ups. All information received by ATS shall be held confidential, shall only be provided to authorized government agencies and law enforcement agencies in connection with automated traffic enforcement, shall not be used for any purpose unrelated to automated traffic enforcement, and shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information within six months from the date the information was first received, or until final disposition of the citation, whichever date is later. Notwithstanding the aforesaid, the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.
- 1.2.5 The Axsis System shall provide the Customer with the ability to run and print standard system reports. For any reports not readily available from the Axsis System, ATS shall provide a cost estimate to the Customer for providing such services.
- 1.2.6 ATS will repair, as necessary, all Camera Systems. Customer shall reimburse ATS for the cost of repair for any damage, other than normal wear and tear or routine maintenance, to the Camera System(s) except to the extent the damage is caused by the negligence, recklessness or willful misconduct on the part of ATS or its employees, agents, or contractors.
- 1.2.7 ATS shall provide a help-line to assist the Customer with resolving any problems encountered regarding its Camera System and/or Citation processing. The help-line shall function during normal business hours.
- 1.2.8 As part of its Camera System, ATS shall provide violators with the ability to view Violations online. This online viewing system shall include a link to the ATS payment website(s) and may offer the opportunity to download an affidavit of non-liability online. Online obtained affidavits, if approved by the Court, may be directed to and processed by ATS and communicated to the Court via the Axsis transfer described above.
- 1.2.9 For video retrievals requested by Customer unrelated to enforcement of a Violation, including but not limited to investigation of a criminal matter, ATS will provide up to one (1) video retrieval per week at no cost to Customer.

## 1.3 CALIFORNIA VEHICLE CODE

- 1.3.1 Notwithstanding anything to the contrary, and in accordance with California Vehicle Code §21455.5(c)(1), it shall be Customer's duty to develop uniform guidelines for screening and issuing violations and for the processing and storage of confidential information ("Guidelines"), and to establish procedures to ensure compliance therewith. ATS shall not perform this agreement in any manner inconsistent with Customer's Guidelines, and the Parties hereto expressly acknowledge and agree that Customer's Guidelines shall be paramount and superseding.
- 1.3.2 Notwithstanding anything to the contrary, ATS shall not install any automated traffic enforcement system unless the Customer's City Council has made and adopted a finding

of fact establishing that the system is needed at the specific location for reasons related to safety as required by the California Vehicle Code §21455.5(c)(2)(A). Furthermore, ATS shall not install any automated traffic enforcement systems unless Customer and ATS agree in a writing signed by both Parties.

- 1.3.3 Notwithstanding anything to the contrary, and in accordance with the California Vehicle Code §21455.5(c)(2)(D), ATS shall not regularly inspect, nor maintain the automated traffic enforcement warning signs which are required to be posted by the California Vehicle Code.
- 1.3.4 Notwithstanding anything to the contrary, and in accordance with the California Vehicle Code §21455.5(c)(2)(E), ATS shall not oversee the establishment or change of signal phases and the timing thereof.
- 1.3.5 Notwithstanding anything to the contrary, and in accordance with the California Vehicle Code §21455.5(c)(2)(F), ATS shall not maintain the controls necessary to ensure that only those citations that have been reviewed and approved by law enforcement are delivered to violators. Furthermore, ATS shall not deliver any citation to a violator that has not been reviewed and approved by authorized law enforcement personnel.

## 2. CUSTOMER SCOPE OF WORK

#### 2.1 GENERAL IMPLEMENTATION REQUIREMENTS

- 2.1.1 The Customer shall be responsible for notifying ATS of any proposed legislative and/or ordinance changes in writing within a reasonable time after passage of any such proposed legislation. ATS will not be responsible for any damages if not notified within the required time.
- 2.1.2 The Customer is responsible for all final jurisdictional issues.

#### 2.2 STREETS AND TRAFFIC DEPARTMENT OPERATIONS

- 2.2.1 Customer understands that during the term of this Agreement ATS is not required to move or remove an installed Camera System, including imbedded sensors, that is subject to this Agreement without a separately executed written agreement between Customer and ATS, regardless of whether such action is necessary for road construction, improvements, or other such projects.
- 2.2.2 Customer will design, fabricate, install and maintain new and existing red light camera warning signs.
- 2.2.3 Customer understands that proper operation of a Camera System requires access to traffic signal phase connections. Customer, therefore, shall provide ATS reasonable access to traffic signal phase connections according to approved design. When traffic signal phase connections are not under the jurisdiction of the Customer, it shall be the Customer's responsibility to negotiate agreements with the owner or maintaining agency of the traffic signal controller and infrastructure in order to provide the required access to said phase connections and infrastructure and any reasonable costs associated with needed agreements shall be funded by the Customer.
- 2.2.4 Customer understands that proper operation of a Camera System sometimes requires attachment of certain items of detection equipment to existing signal masts, mast arms and / or other street furniture. Customer, therefore, shall provide ATS access to attach certain items of detection equipment to existing signal masts, mast arms and / or other street furniture for the proper operation of a Camera System.
- 2.2.5 Customer shall allow ATS to access power from existing power sources at no cost and shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Camera System within the Customer's jurisdiction. If

these items are not made available, the costs of any additional conduit or power infrastructure needed to support installation of the Camera System shall be funded by Customer. If existing power sources are not immediately available, Customer will allow ATS to use temporary power until the existing power is established. In situations where it is not possible to obtain electrical power from a pre-existing source, Customer shall bear the reasonable costs (or reimburse ATS) for obtaining/routing power. When access to power facilities is not under the jurisdiction of the Customer, it shall be the Customer's responsibility to negotiate any necessary agreements with the owner or maintaining agency of the power facility and infrastructure in order to provide required access to said power facilities and infrastructure. Any reasonable costs associated with the needed agreements shall be funded by the Customer

## 2.3 LAW ENFORCEMENT DEPARTMENT OPERATIONS

Customer shall continue to process each potential Violation in accordance with State Law and/or Municipality Ordinances within three (3) business days of its appearance in the Law Enforcement Review Queue, using Axsis to determine which Violations will be issued as Citations or notices of violation. In the event that Customer fails to process potential Violations within this timeframe, ATS shall not be liable for failure to issue a notice or citation within statutory timeframes.

#### 2.4 COURT OPERATIONS

- 2.4.1 Customer shall continue to provide a judge or hearing officer and court facilities to schedule and hear disputed Citations.
- 2.4.2 Customer shall approve or reject any changes to the Citation or notice of violation form within fifteen (15) days of receipt from ATS. Subject to Customers approval, ATS reserves the right to make non-substantive formatting or incidental changes to the Citation or notice of violation without approval by Customer.
- 2.4.3 Customer shall continue to handle inbound and outbound phone calls and correspondence from defendants who have questions about disputes and other issues relating to Citation adjudication. Customer may refer citizens with questions regarding ATS or Axsis technology and processes to websites and/or toll free telephone numbers provided by ATS for that purpose.
- 2.4.4 Any potential, one time, direct costs to ATS to develop an interface between the Court system will be initially paid by ATS and any such cost will be reimbursed to ATS by Customer in addition to the Fees in Exhibit A, Service Fee Schedule 1.

#### 2.5 INFORMATION TECHNOLOGY DEPARTMENT OPERATIONS

2.5.1 In the event that remote access to the ATS Axsis System is blocked by Customer network security infrastructure, the Customer's Department of Information Technology shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.

 $P:\APPS\WPDATA\CATH\0001\DOC\2917\ -\ American\ Traffic\ Solutions\ Inc\ Automated\ Traffic\ Enforcement\ System\ Agreement\ (final\ 02.26.14).doc$ 



## **Agenda Report**

**City Council** 

**MEETING DATE: 4/25/2018** 

## TITLE:

Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code Section 54956.9.

Initiation of litigation pursuant to Government Code Section 54956.9(d)(4). Number of potential cases: One

## FROM:

Charles McClendon, City Manager



## **Agenda Report**

**City Council** 

**MEETING DATE: 4/25/2018** 

TITLE:

Conference with Legal Counsel - Existing Litigation pursuant to Government Code section

54956.9(d)(1):

Name of Case: Cathedral City v. Rivera (Aurora Cota)

Riverside County Superior Court Case Number: INC1302340

FROM:

Eric S. Vail, City Attorney



## **Agenda Report**

Housing Successor Agency

**MEETING DATE: 4/25/2018** 

TITLE:

Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

**Property Location**: Approximately 8.4 acres at the South side of Vega Rd and Landau Blvd APN #s 678-060-001 to 005, and 678-060-049 to 053

Negotiating Parties: City of Cathedral City as Housing Successor and Urban Housing Communities

("UHC")

Property Owners: City of Cathedral City as Housing Successor

**Under Negotiations**: Property Negotiations

FROM:

Tami Scott, Administrative Services Director



## **Agenda Report**

File #: 2018-138 Item No: 6.D.

**Housing Successor Agency** 

**MEETING DATE: 4/25/2018** 

TITLE:

Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

**Property Location:** Approximately 5 acres at the southeast corner of West Buddy Rogers and East Palm Canyon Drive.

**Negotiating Parties:** City of Cathedral City as the Housing Successor Agency to the former Redevelopment Agency, City Urban Revitalization Corporation and Cathedral Canyon Development LLC

Property Owner: City of Cathedral City as the Housing Successor Agency to the Former

Redevelopment Agency and City Urban Revitalization Corporation

Under Negotiations: Price and Terms for potential sale of real property.



## **Agenda Report**

File #: 2018-140 Item No: 6.E.

Successor Agency to the Former Redevelopment Agency

**MEETING DATE: 4/25/2018** 

TITLE:

Conference with Real Property Negotiator Pursuant to Government Code Section 54956.8.

**Property Location:** Approximately 13.5 acres south of East Palm Canyon Drive at Date Palm Drive **Negotiating Parties:** City of Cathedral City as the Successor Agency to the former Redevelopment

Agency and the City Urban Revitalization Corporation **Property Owner:** City Urban Revitalization Corporation

**Under Negotiations:** Price and Terms for potential sale of real property

FROM:

Stone James, Economic Development Director