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# City Council/Successor Agency Agenda

Thursday, February 6, 2014

1:30 p.m.

City Hall Council Chambers at  
44-950 Eldorado Drive, Indian Wells



*Indian Wells City Hall*

WELCOME TO A REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL. ALL PERSONS WISHING TO ADDRESS THE CITY COUNCIL SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM BEFORE THE MEETING BEGINS AND GIVE IT TO THE CITY CLERK. WHEN THE MAYOR HAS RECOGNIZED YOU, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A 3-MINUTE TIME LIMIT IS CUSTOMARY. PLEASE NOTE THAT YOU MAY ADDRESS THE CITY COUNCIL ON AN AGENDA ITEM AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE MAYOR. ANY PUBLIC RECORD, RELATING TO AN OPEN SESSION AGENDA ITEM, THAT IS DISTRIBUTED WITHIN 72 HOURS PRIOR TO THE MEETING IS AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL RECEPTION AREA 44-950 ELDORADO DRIVE, INDIAN WELLS DURING NORMAL BUSINESS HOURS.

**1. CONVENE THE CITY COUNCIL/SUCCESSOR AGENCY, PLEDGE OF ALLEGIANCE AND ROLL CALL**

MAYOR TED J. MERTENS  
MAYOR PRO TEM TY PEABODY  
COUNCIL MEMBER PATRICK MULLANY  
COUNCIL MEMBER DOUGLAS HANSON  
COUNCIL MEMBER MARY T. ROCHE

**2. APPROVAL OF THE FINAL AGENDA**

**3. APPROVAL OF THE MEETING MINUTES**

A. January 16, 2014 Regular Meeting Minutes. Page 9.

**4. PROCLAMATIONS AND PRESENTATIONS**

A. Proclamation Recognizing Yvonne Parks, Former Desert Hot Springs Mayor.

**5. PUBLIC COMMENTS**

ALL PERSONS WISHING TO ADDRESS THE CITY COUNCIL SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM IN ADVANCE AND HAND IT TO THE CITY CLERK. AT THE APPROPRIATE TIME, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. SPEAKERS ARE LIMITED TO THREE MINUTES. PARTIES ARE ENCOURAGED TO SUBMIT THEIR COMMENTS IN WRITING WITH ANY ATTACHMENTS OR EXHIBITS THEY WISH FOR THE COUNCIL TO REVIEW, PREFERABLY 24 HOURS PRIOR TO THE MEETING. SPEAKERS CAN THEN USE THEIR THREE-MINUTES TO SUMMARIZE THE KEY POINTS OF THEIR COMMENTS. PLEASE NOTE THAT YOU MAY ADDRESS THE CITY COUNCIL ON AN AGENDA ITEM AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE MAYOR.

UNDER THE BROWN ACT, THE COUNCIL SHOULD NOT TAKE ACTION ON OR DISCUSS MATTERS RAISED DURING THE PUBLIC COMMENT PORTION OF THE AGENDA WHICH ARE NOT LISTED ON THE AGENDA. COUNCIL MEMBERS MAY REFER SUCH MATTERS TO STAFF FOR FACTUAL INFORMATION OR TO BE PLACED ON A SUBSEQUENT AGENDA FOR CONSIDERATION. NOTWITHSTANDING THE FOREGOING, COUNCIL MEMBERS AND STAFF MAY BRIEFLY RESPOND TO STATEMENTS MADE OR QUESTIONS POSED DURING PUBLIC COMMENT, AS LONG AS SUCH RESPONSES DO NOT CONSTITUTE ANY DELIBERATION OF THE ITEM.

- A. Public Comments
- B. Response to Prior Public Comments

## 6. CONSENT CALENDAR

ALL MATTERS LISTED ON THE CONSENT CALENDAR ARE CONSIDERED TO BE ROUTINE AND WILL BE ENACTED BY ONE VOTE. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS MEMBERS OF THE CITY COUNCIL OR AUDIENCE REQUEST THAT SPECIFIC ITEMS BE REMOVED FROM THE CONSENT CALENDAR FOR SEPARATE DISCUSSION AND ACTION. IF YOU WISH TO ADDRESS THE CITY COUNCIL, PLEASE FILL OUT A BLUE PUBLIC COMMENT FORM IN ADVANCE AND HAND IT TO THE CITY CLERK. PLEASE STATE YOUR NAME FOR THE PUBLIC RECORD. A THREE MINUTE LIMIT IS CUSTOMARY. FINANCIAL MATTERS WILL BE INDICATED AS BUDGETED OR NON-BUDGETED BELOW.

- A. Approve Loan Agreement, Modified Owner Participation Agreement, and Authorize City Manager to Execute Agreement in Relation to Village Undergrounding District #2. Page 20.

**RECOMMENDED ACTIONS:**

COUNCIL APPROVES THE LOAN AGREEMENT AS TO FORM FOR VILLAGE UNDERGROUNDING DISTRICT #2; AND

APPROVES THE MODIFIED OWNER PARTICIPATION AGREEMENT AS TO FROM; AND

AUTHORIZES AND DIRECTS THE CITY MANAGER TO EXECUTE THE AGREEMENTS WITH PARTICIPATING RESIDENTS.

- B. Receive/File City Treasurer's Cash Balance and Investment Report. Page 76.

**RECOMMENDED ACTION:**

COUNCIL RECEIVES AND FILES THE SEPTEMBER 2013 CITY TREASURER'S CASH BALANCE AND INVESTMENT REPORT.

- C. FAMD Warrant and Demands. Page 101.

**RECOMMENDED ACTION:**

COUNCIL APPROVES THE FEBRUARY 6, 2014 FAMD WARRANT AND DEMANDS.

- D. City Warrant and Demands. Page 103.

**RECOMMENDED ACTION:**

COUNCIL APPROVES THE FEBRUARY 6, 2014 CITY WARRANT AND DEMANDS.

**7. GENERAL BUSINESS**

- A. Discussion and Direction Regarding Revision to Mayoral Rotation Ordinance. Page 118.

**RECOMMENDED ACTION:**

COUNCIL PROVIDES DIRECTION TO STAFF.

- B. Approve Agreement with Vacation Rental Compliance for Short-Term Vacation Rental Compliance Program. Page 141.

**RECOMMENDED ACTIONS:**

COUNCIL APPROVES THE AGREEMENT WITH VACATION RENTAL COMPLIANCE FOR THE DEVELOPMENT AND MANAGEMENT OF SHORT-TERM VACATION RENTAL COMPLIANCE PROGRAM; AND

AUTHORIZES AND DIRECTS THE CITY MANAGER TO EXECUTE AGREEMENT; AND

AUTHORIZES AND DIRECTS STAFF TO PREPARE A REQUISITION IN THE AMOUNT NOT TO EXCEED \$12,000 FOR FISCAL YEAR 2013-14.

- C. 2014-15 Strategic Planning Update: Financial Condition. Page 151.

**RECOMMENDED ACTIONS:**

COUNCIL TAKES PUBLIC INPUT AS TO THE FINANCIAL CONDITION UPDATE; AND

RECEIVES AND FILES THIS UPDATE; AND

PROVIDES DIRECTION TO STAFF AS TO ANY MODIFICATIONS TO THE CITY COUNCIL DISCUSSION ISSUES LIST FOR THE FEBRUARY WORKSHOPS.

**8. SUCCESSOR AGENCY**

- A. Adopt Resolution Approving Recognized Obligation Payment Schedule 14-15A for July 1 through December 31, 2014 and Finding this Action is Exempt Under CEQA. Page 188.

**RECOMMENDED ACTIONS:**

SUCCESSOR AGENCY FINDS THAT THIS ACTION IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15060(C)(3) THE ACTIVITY IS NOT A PROJECT AS DEFINED IN SECTION 15378; AND

ADOPTS RESOLUTION BILL SA NO. 2014-02 APPROVING AND ADOPTING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE PURSUANT TO HEALTH AND SAFETY CODE SECTION 34117(L).

**9. CITY MANAGER’S REPORT/COMMENTS AND MATTERS FROM STAFF**

**10. COUNCIL MEMBERS’ REPORTS AND COMMENTS**

**A. Council Member Roche**

California Joint Powers Insurance Authority  
Coachella Valley Mountains Conservancy  
Cove Communities Services Commission  
Coachella Valley Animal Campus  
CVAG Conservation Commission  
CVAG Energy Committee  
Indian Wells Marketing Committee  
Jacqueline Cochran Regional Airport Commission

**B. Council Member Hanson**

Coachella Valley Economic Partnership  
CVAG Transportation Committee  
Indian Wells Finance and Legal Services Oversight Committee  
Indian Wells Golf Resort Advisory Committee  
Indian Wells Tee Committee  
Riverside County Transportation Committee  
Sunline Transit Agency

**C. Council Member Mullany**

Cove Communities Services Commission  
Indian Wells Golf Resort Advisory Committee  
Indian Wells Public Safety Committee  
Indian Wells Tee Committee

**D. Mayor Pro Tem Peabody**

CVAG Homelessness Committee  
Indian Wells Community Activities Committee  
Indian Wells Grants-in-Aid Committee  
Indian Wells Finance and Legal Services Oversight Committee  
Indian Wells Marketing Committee  
Indian Wells Personnel Committee  
Indian Wells Crossing Development Ad Hoc Committee  
Tennis Stadium Ad Hoc Committee

**E. Mayor Mertens**

CVAG Executive Committee  
CVAG Public Safety Committee  
Greater Palm Springs Convention and Visitors Bureau  
Indian Wells Personnel Committee  
Indian Wells Public Safety Committee  
Indian Wells Crossing Development Ad Hoc Committee  
Tennis Stadium Ad Hoc Committee

**11. CITY ATTORNEY REPORTS AND COMMENTS**

**12. CITY COUNCIL CLOSED SESSION**

- A. Conference with Legal Counsel Regarding Existing Litigation, Pursuant to Government Code Section 54956.9(d)(1): City of Indian Wells, Respondent vs. Douglas A. Lawellin, et al, Appellants, California Superior Court, Fourth Appellate District, Division Two, Case No. E0600000.

**13. ADJOURNMENT**

TO A SPECIAL STRATEGIC PLANNING WORKSHOP OF THE CITY COUNCIL TO BE HELD AT 1:00 P.M. ON FEBRUARY 11, 2014 AT THE INDIAN WELLS GOLF RESORT, CELEBRITY BALLROOM.

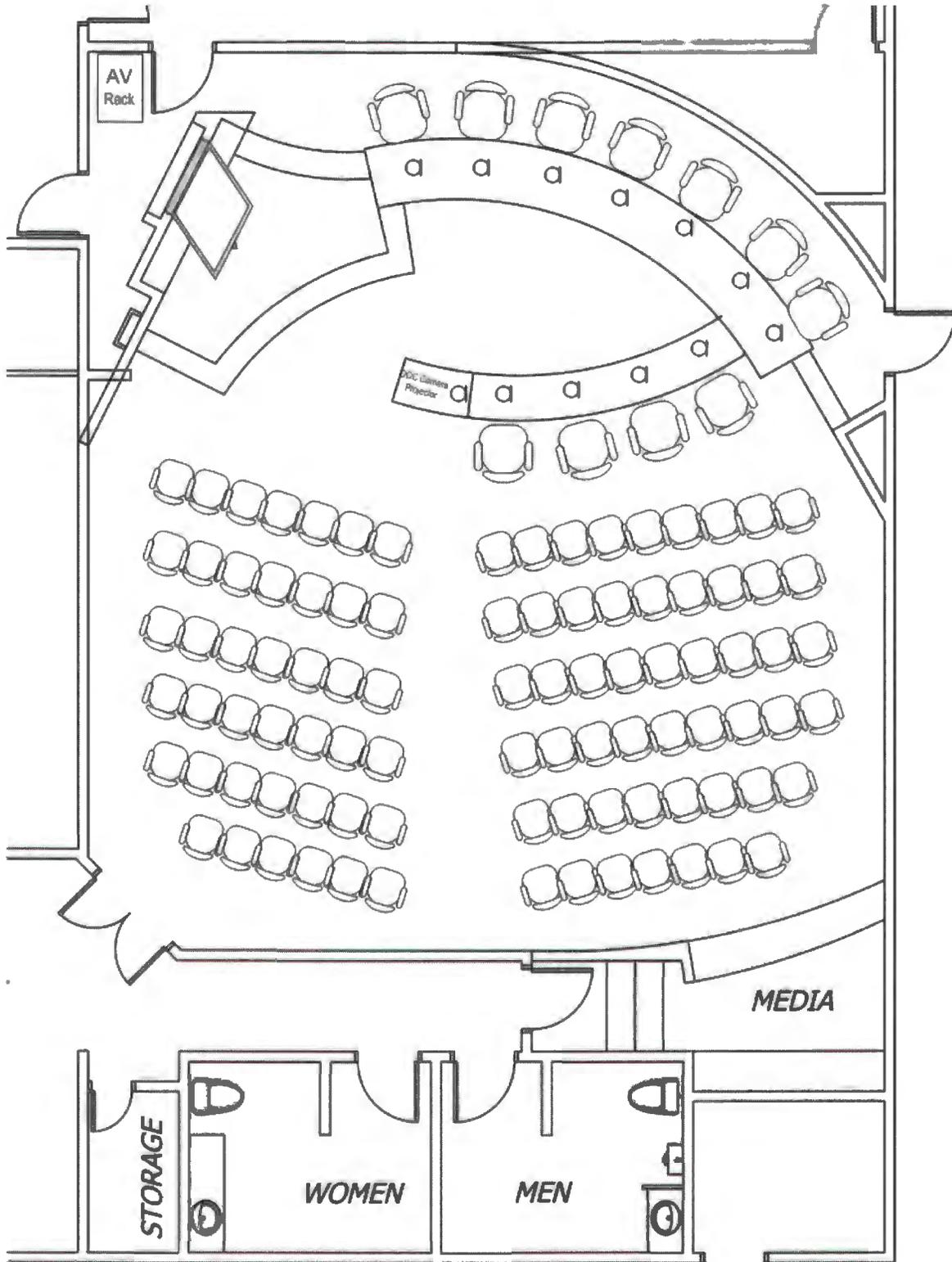
IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CITY CLERK AT (760) 346-2489. NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING. 128 CFR 35.102.35.104 ADA TITLE III

AFFIDAVIT OF POSTING

I, Anna Grandys, certify that on January 31, 2014, I caused to be posted a notice of a City Council/Successor Agency Meeting to be held on Thursday, February 6, 2014 at 1:30 p.m. in the City Hall Council Chambers/Executive Conference Room.

Notices were posted at Indian Wells Civic Center, Village 1 [Ralph's], and Indian Wells Plaza [Indian Wells Chamber of Commerce].

  
\_\_\_\_\_  
Anna Grandys  
Chief Deputy City Clerk



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# City Council/Successor Agency Minutes

Thursday, January 16, 2014

1:30 p.m.

City Hall Council Chambers at  
44-950 Eldorado Drive, Indian Wells



WELCOME TO A REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL. ALL PERSONS WISHING TO ADDRESS THE CITY COUNCIL SHOULD FILL OUT A BLUE PUBLIC COMMENT FORM BEFORE THE MEETING BEGINS AND GIVE IT TO THE CITY CLERK. WHEN THE MAYOR HAS RECOGNIZED YOU, PLEASE COME FORWARD TO THE PODIUM AND STATE YOUR NAME FOR THE RECORD. A 3-MINUTE TIME LIMIT IS CUSTOMARY. PLEASE NOTE THAT YOU MAY ADDRESS THE CITY COUNCIL ON AN AGENDA ITEM AT THE TIME IT IS DISCUSSED, BUT ONLY AFTER BEING RECOGNIZED BY THE MAYOR. ANY PUBLIC RECORD, RELATING TO AN OPEN SESSION AGENDA ITEM, THAT IS DISTRIBUTED WITHIN 72 HOURS PRIOR TO THE MEETING IS AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL RECEPTION AREA 44-950 ELDORADO DRIVE, INDIAN WELLS DURING NORMAL BUSINESS HOURS.

**1. CONVENE THE CITY COUNCIL/SUCCESSOR AGENCY AND ROLL CALL**

[1:36:03] Mayor Mertens convened the City Council of the City of Indian Wells at 1:36 p.m. in the City Hall Council Chambers.

PRESENT: 5 – Mayor Ted Mertens, Mayor Pro Tem Ty Peabody, Council Member Patrick Mullany, Council Member Douglas Hanson, and Council Member Mary T. Roche.

**2. APPROVAL OF THE FINAL AGENDA**

[1:37:18]

**A motion was made by Council Member Mullany, seconded by Mayor Pro Tem Peabody, to Approve the Agenda as Submitted. The motion carried by the following vote 5-0:**

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche  
NOES: 0 – None

**3. APPROVAL OF THE MEETING MINUTES.**

[1:38:03]

- A. December 19, 2013 Special Study Session Minutes. Page 33.
- B. December 19, 2013 Regular Meeting Minutes. Page 38.

**A motion was made by Council Member Roche, seconded by Council Member Mullany, to Approve the Minutes as Submitted. The motion carried by the following vote 5-0:**

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche  
NOES: 0 – None

**4. PROCLAMATIONS AND PRESENTATIONS**

- A. Presentation by the Queen and Her Court of the 2014 National Date Festival and County Fair.

[1:38:28] Date Festival Queen Makenna MacIntyre and her Princesses Chrystabell Rameriz and Lindsey Klein announced the 68th Annual Date Festival would be held on February 14 - 23, 2014.

- B. Presentation of the 2014 Indian Wells Arts Festival Poster, Entitled "Indian Wells" by Julie Dunn.

[1:43:43] Indian Wells Arts Festival Executive Director Dianne Funk presented the 2014 Indian Wells Arts Festival Poster and announced the 2014 Arts Festival would be held from April 4-6, 2014. She stated there were 10,000 attendees last year with art sales of \$650,000. Ms. Funk introduced Bill Schinsky and Karen Riley, Festival Directors of "objet trouvé, found art festival." Ms. Riley stated the objet trouvé festival will be held within the Indian Wells Arts Festival, and it will feature a Eiffel Tower art piece.

**5. PUBLIC COMMENTS**

Mr. Bob Mitchell, resident, stated the Tennis Magazine which is distributed to all USTA members has an advertisement regarding the Indian Wells Tennis Garden's new stadium.

Mr. Bill Powers, resident and Mr. Raymond Moore, Chief Executive Officer of the Indian Wells Tennis Gardens, spoke on behalf of the YMCA and described some of the 44 programs offered by the YMCA in which 3,500 Coachella Valley children participated. Mr. Moore spoke of "kids day" in March at the Tennis Gardens which includes tennis clinics, lessons, entertainment and food, as well as the yearly program sponsored by the National Junior Tennis League which provides similar services. Mr. Powers announced that this evening is the YMCA campaign kick-off for the annual fundraising.

**6. CONSENT CALENDAR**

[2:05:11]

- A. Approve Replacement of Four HVAC Units as Part of 45-200 Club Drive Rehabilitation and Finds the Project Exempt from CEQA. [Budgeted]. Page 53.

It was determined to **FIND** that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301(D), Existing Facilities; and

to **AWARD** the contract to Desert Air Conditioning, Inc. for the installation of four HVAC units for 45-200 Club Drive, Suites A and D; and

to **APPROVE** the construction agreement between Desert Air Conditioning, Inc. and the City and **AUTHORIZE** and **DIRECT** the City Manager to execute the agreement; and

to **APPROVE** the requisition to Desert Air Conditioning, Inc. in the amount of \$44,828 for installation of four HVAC units, two smoke duct detectors, and an air balance report.

**THIS MATTER WAS APPROVED ON THE CONSENT AGENDA.**

- B. Approve the City Council’s 2014 Assignments. Page 76.

It was determined to **APPROVE** the City Council’s 2014 Assignments.

**THIS MATTER WAS APPROVED ON THE CONSENT AGENDA.**

- C. FAMD Warrant and Demands. Page 82.

It was determined to **APPROVE** the January 2, 2014 and January 16, 2014 FAMD Warrant and Demands.

**THIS MATTER WAS APPROVED ON THE CONSENT AGENDA.**

- D. City Warrant and Demands. Page 84.

It was determined to **APPROVE** the January 2, 2014 and January 16, 2014 City Warrant and Demands.

**THIS MATTER WAS APPROVED ON THE CONSENT AGENDA.**

**UNOFFICIAL**

**PASSED THE CONSENT AGENDA. A MOTION WAS MADE BY COUNCIL MEMBER MULLANY, SECONDED BY MAYOR PRO TEM PEABODY, INCLUDING ALL THE PRECEDING ITEMS MARKED AS HAVING BEEN APPROVED ON THE CONSENT AGENDA. THE MOTION CARRIED BY THE FOLLOWING VOTE 5-0:**

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche  
NOES: 0 – None

**7. GENERAL BUSINESS**

- A. Approve Amendment No. 4 to the South of Miles Indemnification Agreement. Page 107.

Council Member Hanson stated that he questioned the need to enter into this Amendment No. 4 to the South of Miles Indemnification Agreement stating while he fully supports having the Indemnification Agreement, he strongly believes the City should be compensated for the Tennis Garden’s use of that property.

It was determined to **APPROVE** Amendment No. 4 to the South of Miles Indemnification Agreement; and

to **AUTHORIZE** and **DIRECT** the Mayor to execute the amendment on behalf of the City.

**A motion was made by Mayor Pro Tem Peabody, seconded by Council Member Roche that this matter be APPROVED. The motion carried by the following vote 4-1:**

AYES: 4 – Mertens, Peabody, Mullany, Roche  
NOES: 1 – Hanson

- B. 2014-15 Strategic Planning Updates: Marketing & Community Services Department; Community Development and Public Works Departments. Page 113.

Mr. Bob Mitchell, resident, stated his comments were on the marketing component and inquired how he could submit them to Council. Mayor Mertens requested Mr. Mitchell provide his detailed comments in written form so that they may be incorporated into the February workshops.

Mr. Andy Elchuck, resident, stated he would like to add discussion of the Indian Wells City Charter to the strategic planning session.

It was **CONSENSUS** of the City Council to **RECEIVE** and **FILE** these updates; and

to **ADD** the following discussion items to the City Council Discussion Issues List for the February workshops: Landscape, Lighting and Maintenance Districts, and the City Charter; and

to **DIRECT** staff to proceed with the following items mentioned in the Community Development and Public Works update: Food Trucks, Pavement Management, Fred Waring Bridge and Mills Act, as these items do not require discussion at the February workshops.

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche

NOES: 0 – None

UNOFFICIAL

3A

C. Approve the City's 2014 Legislative Priorities. Page 132.

It was determined to **ADD** to the 2014 Legislative Priorities language to encourage and support action on the Salton Sea; and

to **APPROVE AS AMENDED** the City's 2014 legislative priorities; and

to **DIRECT** the City Manager to send a letter to CVAG on behalf of the City Council to encourage and support CVAG's action on the issue of the Salton Sea.

**A motion was made by Council Member Hanson, seconded by Council Member Mullany, that this matter be APPROVED. The motion carried by the following vote 5-0:**

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche

NOES: 0 – None

D. Discussion and Direction Regarding CVAG's Draft Single-Use Plastic Bag Ordinance. Page 144.

Ms. Gail McQuary, resident, stated canvas bags carry germs and she does not support the banning of plastic bags. Ms. McQuary suggested a resident survey be taken.

Mr. Andy Elchuck, resident, stated he does not support this issue remarking there are other priorities in the Coachella Valley.

There was discussion by the City Council regarding the priorities of CVAG.

It was the **CONSENSUS** of the City Council that the Mayor represent the City's position of being opposed to banning the use of single-use plastic bags; and

to **DIRECT** the Mayor to report to CVAG that Indian Wells encourages the other cities and CVAG to re-align their priorities and put the Salton Sea at the top of CVAG's priorities.

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche

NOES: 0 – None

**8. SUCCESSOR AGENCY**

- A. Adopt Resolution Approving the Issuance of Refunding Bonds. Page 177.

It was determined to **ADOPT** Resolution Bill SA No. 2014-01 [Resolution SA No. 2014-01] to read as follows:

RESOLUTION SA NO. 2014-01

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE INDIAN WELLS REDEVELOPMENT AGENCY, APPROVING THE ISSUANCE OF REFUNDING BONDS IN ORDER TO REFUND CERTAIN OUTSTANDING BONDS OF THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS, APPROVING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST RELATING THERETO, REQUESTING OVERSIGHT BOARD APPROVAL OF THE ISSUANCE OF THE REFUNDING BONDS, REQUESTING CERTAIN DETERMINATIONS BY THE OVERSIGHT BOARD, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

**A motion was made by Council Member Hanson, seconded by Council Member Mullany that this matter be APPROVED. The motion carried by the following vote 5-0:**

AYES: 5 – Mertens, Peabody, Mullany, Hanson, Roche

NOES: 0 – None

**9. CITY MANAGER’S REPORT/COMMENTS AND MATTERS FROM STAFF**

[3:46:15] City Manager Wade McKinney reported the City is reviewing the punch list for the Highway 111 Phase 3 project with Granite Construction. Mr. McKinney also reported the frontage on either side of Highway 111 within the Phase 3 project area will be improved by the City and work will begin within 10 days.

Director of Marketing and Community Services Nancy Samuelson gave details on the upcoming Pavilion Party stating there are currently 625 residents signed up for the event on Tuesday, January 21, 2014.

**10. COUNCIL MEMBERS' REPORTS AND COMMENTS**

[4:03:18]

**A. Council Member Roche**

Council Member Roche reported that she had recently toured all of the Coachella Valley Mountain Conservancy owned properties and received information on the Conservancy. Ms. Roche reported on the recent Cove Commission meeting wherein the County Fire Department reported that on average for 2013, the Fire Department went out on 22 medical calls a day for the Cove Cities of Palm Desert, Rancho Mirage and Indian Wells. She also reported on the Coachella Valley Animal Campus stating that the Animal Campus has rescued and relocated over 4,500 dogs over the last two years. Ms. Roche stated the Animal Campus will hold a spay and neuter day, as well as being able to obtain dog licenses and this event will be held on January 22 and 24, 2014 in Indio. She reported on CVAG's Energy and Conservation Commission stating the issue of one-use plastic bags was discussed. Ms. Roche announced that she would not seek re-election to the City Council in 2014.

**B. Council Member Hanson**

Council Member Hanson stated he has been appointed as the Alternate to "LoSan" (Los Angeles, San Diego, San Luis Obispo) Rail Corridor Commission stating he has an interest in bringing rail to the Coachella Valley and his belief that rail is needed for our tourism industry. Mr. Hanson also stated he has been elected as an Alternate for LAFCO stating Terry Henderson is the LAFCO representative.

**C. Council Member Mullany**

No report.

**D. Mayor Pro Tem Peabody**

Mayor Pro Tem Peabody reported on the Grants in Aid Committee stating the committee discussed and will propose changes to the guidelines process. Mr. Peabody stated he has concerns regarding CVAG's Homeless Committee, in that he believes CVAG is slanted towards Roy's Homeless Center and he feels some changes should be made.

**UNOFFICIAL**

**E. Mayor Mertens**

Mayor Mertens stated he attended CVAG's Public Safety Committee which continues to deal with the State's prisoner realignment issue which puts responsibility on the County and their local law enforcement resources.

**11. CITY ATTORNEY REPORTS AND COMMENTS**

[4:12:02] City Attorney Stephen Deitsch stated he recommended that the Council recess to Closed Session to discuss the Closed Session items regarding two cases, relating to the City's property owner ID Card Policy and the City's Ticket Policy.

**12. SUCCESSOR AGENCY CLOSED SESSION**

At 4:12 p.m. Mayor Mertens stated the Successor Agency would hold a closed session to discuss the following items.

- A. Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 1.

At 4:57 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

- B. Conference with Legal Counsel Regarding Anticipated Litigation. Initiation of Litigation Pursuant to Government Code Section 54956.9(d)(4). Number of Potential Cases: 1.

At 4:57 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

**13. CITY COUNCIL CLOSED SESSION**

At 4:12 p.m. Mayor Mertens stated the City Council would hold a Closed Session to discuss the following items.

- A. Conference with Legal Counsel Regarding Anticipated Litigation Pursuant to Government Code Section 54956.9(b)(1): Claimant: Peter Fleck.

At 4:57 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

- B. Conference with Legal Counsel Regarding Anticipated Litigation. Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2). Number of Potential Cases: 1.

At 4:57 p.m. City Attorney Stephen Deitsch stated there was no reportable action taken on this item.

**14. ADJOURNMENT**

At 4:58 p.m. Mayor Mertens ADJOURNED to a regularly scheduled meeting of the City Council to be held at 1:30 p.m. on February 6, 2014 in the City Hall Council Chambers.

Respectfully submitted,

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Wade G. McKinney, City Manager/City Clerk

This council meeting may be viewed on the City's website at <http://www.cityofindianwells.org> click on "City Council Meeting View Online" tab and the complete agenda packets are available on the City's website at <http://www.cityofindianwells.org/cityhall/cagaends.asp>

**UNOFFICIAL**

CITY COUNCIL MEETING February 6, 2014

Mayor Mertens, city council members, residents and visitors.

My name is Denny Booth, a resident of Indian Wells for almost sixteen years. Since my arrival here, I have become aware of a major problem facing residents of the Coachella Valley. The problem being the drying up of the Salton Sea.

During a recent weekend, a number of articles appeared in the Desert Sun Newspaper regarding the Salton Sea reminding me of this inevitable problem. And the need to start the action "Now" to keep the further drying up of the sea.

A handwritten signature in black ink, appearing to read "Denny Booth", is written over the word "keep" in the previous paragraph.

With the passage of time since my arrival, a new problem has occurred. It was the subsequent stench from the sea floor sediment being exposed by evaporation of the water from the sea. As an aside, a more descriptive name for the sea today, would be the "SALTON STENCH SEA".

With the future evaporation of the sea water, the stench problem will only get worse. Continuing until the drop in the Salton Sea water

level is reversed. And this would be accomplished, in my opinion, by pumping ocean water into the sea from the Gulf of Cortez. And when the exposed sea floor sediment is once again covered with water.

Today, the cities nearest the Salton Sea are being adversely effected by the smell. It is only a matter of time until the "BIG STENCH" arrives in Indian Wells and the rest of the Coachella Valley. And when it does, it will have a devastating effect on the Coachella Valley economy, health and home values, particulary homes in Indian Wells.

I am suggesting that you, the sitting council get active immediately to provide the leadership for the other valley cities to take action to get water flowing into the Salton Sea, as soon as possible. Which in turn would keep the "BIG STENCH" from ever arriving here.

It should be noted that the above does not address the increased Salton Sea negative effect on the Coachella Valley air polution problem. The cause being more and more particulates will be blown into the air from the further exposure of the sea bed sediment.

Do not let future generations suffer because nothing was done by the

City Council of Indian Wells to provide leadership for the Coachella Valley to get action by the county, state and federal governments to provide the moneys to build the canal. And to negotiate a treaty with the Mexican Government to get their necessary approval.

Granted this will take much time and effort. But talking and writing about it once and awhile will "NEVER" get it done.

Demosthenes James Booth

**File:ISS036-E-011034.jpg**

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- Salton Sink
- Salton Trough
- San Diego–Tijuana
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Salton sea from orbit.<sup>[3]</sup>

## See also

- Lake Urmia
- List of lakes in California
- Salvation Mountain
- San Andreas Fault Observatory at Depth
- Slab City
- List of drying lakes

## Notes

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- ↑ Alles, DL (2007-08-06). "Geology of the Salton Trough" (<http://fire.biol.wvu.edu/trent/alles/GeologySaltonTrough.pdf>) *Biology Department*. Western Washington University. Retrieved 2010-06-06.
- ↑ Singer E. "Ancient Lake Cahuilla – Geology of the Imperial Valley" (<http://home.att.net/~amcimages/singer.html>). Retrieved 2009-07-10.
- ↑ The Salton Sea – Its Beginnings (<http://www.sci.sdsu.edu/salton/PeriscopeSaltonSeaCh1-4.html>). Accessed 2010-06-14
- ↑ History of the Salton Sea ([http://www.saltionsea.ca.gov/ltnav/library\\_content/Hydrology/1961](http://www.saltionsea.ca.gov/ltnav/library_content/Hydrology/1961)) Accessed 2010-06-14
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- ↑ <sup>a</sup> <sup>b</sup> <sup>c</sup> CNN article: "Salton Sea rescue to be named for Sonny Bono" (<http://www.cnn.com/EARTH/9801/16/salton.sea/index.html>)".
- ↑ State of California (<http://www.saltionsea.ca.gov/>)
- ↑ usbr.gov (<http://www.usbr.gov/lc/region/saltionsea/ssbro.html#steps>)
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- ↑ Ross, JE (July 27, 2011). "Flooding of Ancient Salton Sea Linked to San Andreas Earthquakes" (<http://scrippsnews.ucsd.edu/Releases/?releaseID=1176>). *Scripps Institution of Oceanography, University of California at San Diego*. Scripps Oceanography News. Retrieved 31 July 2011.
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- ↑ "Life after people" (#206) – *Life after people*
- ↑ *Highway Dagnet* (<http://www.afi.com/members/catalog/DetailView.aspx?s=&Movie=51230>) at the American Film Institute Catalog
- ↑ "The Monster that Challenged the World" (<http://www.afi.com/members/catalog/DetailView.aspx?s=&Movie=52289>). American Film Institute. Retrieved 2014-01-05.
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## Further reading

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## External links

- Salton Sea Authority (<http://www.saltonsea.ca.gov>)
- Photos of the Salton Sea on Abandoned USA (<http://abandonedusa.com/category/state/california>)
- *Plagues & Pleasures on the Salton Sea* – a documentary on the Salton Sea (<http://www.saltonseadocumentary.com>)
- Salton Basin overview (<http://www.sci.sdsu.edu/salton/SaltonBasinHomePage.html>)
- Salton Sea data and other resources (<http://www.institute.redlands.edu/salton>)
- From the Colorado River to the Salton Sea: The story of Imperial Valley's Water (slideshow) (<http://www.mavensmanor.com/slideshows/ImperialValleyWater/ImperialValleyWater.swf>)
- US Bureau of Reclamation's Salton Sea Restoration Project Office (<http://www.usbr.gov/lc/region/saltonsea/finalreport/>)
- The Salton Sea – A Photo Essay by Scott London (<http://www.scottlondon.com/photo/saltonsea/index.html>)
- *National Geographic* photos of the Salton Sea (<http://magma.nationalgeographic.com/ngm/0502/feature5/index.html>)
- Calexico New River Committee, New River Tributary (<http://www.calexiconewriver.com>)
- *The Salton Sea: an account of Harriman's fight with the Colorado River* ([http://books.google.com/books?id=mAAOAAAAYAAJ&printsec=frontcover&dq=salton+sea&source=bl&ots=-knUjv3Nx&sig=kmmuZEWg6ob2jGQoLdDYOAenAQc&hl=en&ei=F3J1TbvGA42cBA&sa=X&oi=book\\_result&ct=result&resnum=16&sqi=2&ved=0CI0BEOgBMA8#v=onepage&q&f=false](http://books.google.com/books?id=mAAOAAAAYAAJ&printsec=frontcover&dq=salton+sea&source=bl&ots=-knUjv3Nx&sig=kmmuZEWg6ob2jGQoLdDYOAenAQc&hl=en&ei=F3J1TbvGA42cBA&sa=X&oi=book_result&ct=result&resnum=16&sqi=2&ved=0CI0BEOgBMA8#v=onepage&q&f=false))
- The Accidental Sea ([http://www.youtube.com/watch?v=otIU6Py4K\\_A&feature=player\\_embedded](http://www.youtube.com/watch?v=otIU6Py4K_A&feature=player_embedded))
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Categories: Disasters in California | Engineering failures | Environment of California | Environmental disasters in the United States | Geography of the Colorado Desert | Landforms of Imperial County, California | Important Bird Areas of California | Lakes of Riverside County, California | Saline lakes | Endorheic lakes of California | Shrunken lakes | Visitor attractions in Imperial County, California | Salton Sea

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CC/HA ACTION \_\_\_\_\_ MTG. DATE: 2-6-14  
APPROVED  DENIED \_\_\_\_\_ REC/FILE \_\_\_\_\_ CONT. \_\_\_\_\_  
OTHER \_\_\_\_\_  
VOTE: YES 5 NO 0 ABSTAIN \_\_\_\_\_

# ***Indian Wells City Council***

***February 6, 2014***

## ***Staff Report – Public Works***

### **Approve Loan Agreement, Modified Owner Participation Agreement, and Authorize City Manager to Execute Agreements in Relation to Village Undergrounding District #2**

#### **RECOMMENDATIONS:**

City Council **APPROVES** to the Loan Agreement as to form for Village Undergrounding District #2; and

**APPROVES** the modified Owner Participation Agreement as to form; and

**AUTHORIZES** and **DIRECTS** the City Manager to execute the agreements with participating residents.

#### **DISCUSSION:**

##### *Loan Agreement:*

The City is in the process of undergrounding overhead utility wires in the vicinity of Miles Avenue, Warner Trail and Elkhorn Trail (known as the "Village Area"). The City Council approved a loan program, in November 2013, whereby residents affected by the project are eligible to fund their undergrounding improvement work through a fixed low interest loan from the City. Under the terms of loan agreement, the City will finance the underground work on private property based on a construction cost provided by the owner's selected contractor. Interest on the loan will accrue at a rate of one percent (1%) per year with a term of 20 years. Repayment of the loan can be made annually, in lump sum or via property tax but the balance is due when the property is sold. The attached loan agreement includes these details of the loan terms.

Owner Participation Agreement:

The City Council, on November 7, 2013, approved an "Owner Participation Agreement" which details the requirements and obligations of each property owner involved in this project. There was an urgency to execute this agreement with participating residents before December 31, 2013, because of new State legislation involving prevailing wage in which Charter Cities would be required to enforce payment of prevailing wage on all construction projects beginning January 1, 2014. This requirement for the undergrounding project to pay prevailing wages would have significantly increased the cost to residents for the connection from the lateral to their homes. In late December, staff learned that the implementation of the new law was postponed for one year to December 31, 2014.

Critical dates identified in the owner participation agreement were based on the State implementation deadline; however because the State has postponed the implementation of the prevailing wage requirement, the City and the residents affected by the project have additional time to execute the participation agreements. Staff is requesting that the due dates in this agreement that reference the December 31, 2013 deadline be amended to reference the new June 1, 2014 date.

**FISCAL IMPACT:**

There is no net fiscal impact resulting from the loan agreement as each loan will be repaid in full within 20-years at 1% simple annual interest.

**ATTACHEMENTS:**

1. Loan Agreement Contract Abstract
2. Loan Agreement
3. Owner Participation Agreement Abstract
4. Owner Participation Agreement

## AGREEMENT SUMMARY

### **LOAN AGREEMENT – VILLAGE UNDERGROUNDING DISTRICT #2**

Parties: City of Indian Wells, and  
Property Owners within Indian Wells Village Undergrounding  
District No.2 Assessment District

Constituent  
Agreements: 1) Deed of Trust with Assignment of Rents, Security  
Agreement and Fixture Filing  
2) Promissory Note

Responsible  
Department(s): Public Works

Purpose:

To provide voluntary financing to Property Owners to finance utility lateral installation work performed on private property located within Indian Wells Village Undergrounding District No. 2 Assessment District. The utility lateral installation work is performed as part of the Indian Wells Village Undergrounding District No. 2 Project ("Project"). The Project involves the undergrounding of all utilities within the Project area by Property Owners and utilities.

Contract Terms:

- The City will provide financing the form of a loan with one percent (1%) simple interest per annum in an amount up to the total cost of the installation work.
- The loan will be secured against the affect real property through a deed of trust.
- The loan and all interest is due upon the earlier of twenty (20) years, unauthorized transfer of the property or default by the Property Owner.
- The loan must be used to finance the installation work.
- The loan is disbursed by the City to the Property Owner's contractor based on a disbursement schedule established by the City.

- As a condition of the loan, the Property Owner must require the contractor to maintain insurance covering the work and the City during the term of the Loan Agreement.
- Any transfer of an interest in the property where the installation work is being financed by the City requires prior written approval by the City. The new Property Owner must additionally assume all of the original Property Owner's obligations under the Loan Agreement.

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of Indian Wells  
44-950 Eldorado Drive,  
Indian Wells, California 92210-7497  
Attn: [Anna Grandys, City Clerk]

[ APN ]

**CITY OF INDIAN WELLS  
LOAN AGREEMENT**

Indian Wells Village Undergrounding District No. 2

This Loan Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), by and between the City of Indian Wells, a municipal corporation of the State of California, located at 44-950 Eldorado Drive, Indian Wells, California 92210-7497, County of Riverside, State of California, (hereinafter referred to as "Lender") and [ INSERT NAME(S) ], an individual or individuals residing at [ INSERT ADDRESS ] (hereinafter referred to as "Borrower"). Lender and Borrower are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**RECITALS**

**WHEREAS**, this Agreement is made for the purpose of financing utility lateral installation work to be performed on the Borrower's property with funds provided by the Lender as part of the Indian Wells Village Undergrounding District No. 2 Project ("Project");

**WHEREAS**, Borrower is the fee owner of that certain real property located at \_\_\_\_\_ in the City of Indian Wells ("Property"), plus all buildings, structures and improvements thereon. The Property is legally described on the attached Exhibit A, incorporated herein by this reference;

**WHEREAS**, Lender adopted Resolution No. 2013-09 creating Indian Wells Village Undergrounding District No. 2 ("District No. 2") in accordance with Chapter 13.04 of the Indian Wells Municipal Code. District No. 2 requires all property owners and utilities within the Project area to underground their utilities within the time prescribed by the City Council. Property owners within District No. 2 are responsible for all necessary facility changes on their property for the purpose of receiving service from the lines of the supplying utility ("Work");

**WHEREAS**, Lender adopted Resolution No. 2013-50 creating Indian Wells Village Undergrounding District No. 2 Assessment District for the purpose of offering voluntary contractual assessment financing to property owners within District No. 2 in order to provide assistance with the cost of the Work and to ensure all utility services within District No. 2 may be undergrounded;

**WHEREAS**, Lender will provide financing in the form of a loan with one percent (1%)

simple interest per annum in an amount up to the total cost of the Work secured against the affected real property through a deed of trust;

**WHEREAS**, the principal loan amount with interest at the rate set forth herein shall be due upon the earlier of twenty (20) years, Transfer or Default, as defined herein;

**WHEREAS**, by this Agreement, Lender desires to loan and Borrower desires to borrow the principal loan amount set forth herein for the sole purpose of financing the Work; and

**WHEREAS**, this Agreement is made for the benefit of and shall be binding upon the Lender and Borrower, their heirs, successors, survivors and assigns.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### 1. WORK TO BE PERFORMED

1.1 **The Work.** The Borrower agrees to perform or to have performed the Work described in the attached Exhibit B, incorporated by this reference, on the Property.

1.2 **Schedule of Performance of the Work.** Owner shall commence Work no later than **June 1, 2014**, and shall complete all Work within \_\_\_\_\_ months of the commencement date of the Work ("Schedule of Performance").

1.3 **Use of Loan Funds.** The Borrower agrees that funds provided under this Agreement will be used only for approved Work described in Exhibit B. Changes in the work are not permitted without the prior written approval of the Lender. The Borrower agrees to perform the Work to completion. Completion of the work shall be considered to take place upon the filing of a duly executed "Notice of Completion" in a form acceptable to the Lender. The Notice of Completion shall signify: (1) that the work as shown in Exhibit B and any approved change orders was completed; and (2) the acceptance of the work by the Borrower.

### 2. LOAN CONDITIONS

2.1 **Loan.** The Lender shall loan to the Borrower the principal amount of [INSERT AMOUNT] Dollars (\$\_\_\_\_) ("Loan") for the purpose of performing the Work upon full execution of this Agreement. The obligation to repay the Loan shall be evidenced by a promissory note in the form provided in the attached Exhibit C ("Note"), incorporated herein by this reference, which shall be executed by Borrower concurrently with the execution of this Agreement.

2.2 **Interest.** The outstanding principal balance of the Loan shall accrue interest at the annual rate of one percent (1%), per annum, commencing on the date of this Agreement and continuing until the Loan is fully repaid.

2.3 **Security.** Borrower shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the deed of trust in the form provided in the attached Exhibit D ("Deed of Trust", incorporated herein by this reference, and recording it as a lien against the Property.

2.4 **Loan Disbursement.** Borrower hereby directs and authorizes Lender to make all Loan disbursements directly to Borrower's contractor on behalf of Borrower. The Loan disbursement shall consist of three disbursements to the Borrower's contractor at different stages in the Work as follows: [\*\*\*\*\*CITY TO CHECK THIS DISBURSEMENT SCHEDULE AND REVISE AS NECESSARY FOR EACH LOAN\*\*\*\*\*]

Initial Payment (10% of the total Loan amount) =	[\$[INSERT DOLLAR AMOUNT]]	To be paid once Lender has received an anticipated start date from the Borrower or the Borrower's contractor.
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Interim Payment (75% of the total Loan amount) =	[\$[INSERT DOLLAR AMOUNT]]	To be paid following full inspection and acceptance by each utility and City's Building and Safety Department.
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Final Payment (15% of the total Loan amount) =	[\$[INSERT DOLLAR AMOUNT]]	To be paid following final Southern California Edison cut over and completion of the final contractor cleanup work activities
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Payments are to be disbursed within ten (10) calendar days of receiving the proper request and utility approvals subject to the requirements set forth herein. Borrower hereby agrees and acknowledges that Borrower shall not be entitled to any interest nor shall any interest accrue on the Loan amount during the period the Loan funds are within the possession of Lender. The Lender shall not be obligated to make such disbursement of the Loan or take any other action unless the following conditions precedent are satisfied prior to such disbursement:

2.4.1 There exists no Default, as defined in Section 6 below, nor any act, failure, omission or condition that would constitute an event of Default under the Loan.

2.4.2 A title insurer reasonably acceptable to the Lender is unconditionally and irrevocably committed to issuing an ALTA Lender's Policy of insurance insuring the priority of the Deed of Trust in the amount of the Loan, subject only to such liens, conditions, encumbrances, restrictions, exceptions and exclusions as may be reasonably acceptable to the Lender, and containing such endorsements as the Lender may reasonably require.

2.5 **Repayment Schedule.** The Loan shall be repaid as follows:

2.5.1 The Loan shall have a Term that commences on the Effective Date of this Agreement and it shall expire twenty (20) years thereafter.

2.5.2 All principal and accrued interest on the Loan shall be due in full on the earlier to occur of (i) the date of any Transfer not authorized by the Lender, (ii) the date of any Default, or (iii) twenty (20) years from the Effective Date of this Agreement.

2.5.3 The Borrower shall have the right to prepay the Loan at any time without premium or penalty.

### 3. LOAN REQUIREMENTS

3.1 **Information.** The Borrower shall provide any information reasonably requested by the Lender in connection with the Work.

3.2 **Records.** The Borrower shall maintain complete, accurate, and current records pertaining to the Work for a period of five (5) years after the creation of such records, and shall permit any duly authorized representative of the Lender to inspect and copy such records. Such records shall include all invoices, receipts, and other documents related to expenditures from the Loan funds. Records must be kept accurate and current. The Lender shall notify the Borrower of any records it deems insufficient. The Borrower shall have twenty-one (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Lender in such notice, or if a period longer than twenty-one (21) days is reasonably necessary to correct the deficiency, then Borrower shall begin to correct the deficiency within twenty-one (21) days and correct the deficiency as soon as reasonably possible.

3.3 **Audits.** The Borrower shall make available for examination at reasonable intervals to the Lender all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit the Lender to audit, examine, and make excerpts or transcripts from such records. The Lender may make audits of any conditions relating to this Agreement

3.4 **Hazardous Materials.** The Borrower shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. The Borrower shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction of projects like the Work or kept and used in and about residential property.

3.5 **Maintenance and Damage.** During the course of the Work, the Borrower shall maintain the Work and the Property in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if the Borrower has not cured

such condition within thirty (30) days after receiving a Lender notice of such a condition, then in addition to any other rights or remedies available to the Lender, the Lender shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property. If any of the Work now or in the future is damaged or destroyed, then Borrower shall, at its cost and expense, diligently undertake to repair or restore such Work consistent with the plans and specifications approved by the Lender with such changes as have been approved by the Lender. Such work or repair shall be commenced no later than the later of one hundred twenty (120) days after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within ninety (90) days thereafter (or such longer period for the commencement and completion as may be extended by the Lender in its reasonable discretion). Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then the Borrower shall make up the deficiency.

**3.6 Fees and Taxes.** The Borrower shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Property or the Work, and shall pay such charges prior to delinquency.

**3.7 Notice of Litigation.** The Borrower shall promptly notify the Lender in writing of any litigation materially affecting the Property or the Work and of any claims or disputes that involve a material risk of such litigation.

**3.8 Insurance Requirements.** The Borrower's contractor shall take out and maintain or shall take out and maintain throughout the Term of this Agreement or completion of the Work, whichever is later, a commercial general liability policy in the amount of One Hundred Thousand Dollars (\$100,000) combined single limit, and a comprehensive automobile liability policy in the amount of One Hundred Thousand Dollars (\$100,000), combined single limit, or such other policy limits as the Lender may approve at its discretion, including contractual liability, as shall protect the Borrower and the Lender from claims for such damages. Such policy or policies shall be written on an occurrence form basis. The Borrower's contractor shall also furnish to the Lender evidence satisfactory to the Lender that the Borrower's contractor carries workers' compensation insurance as required by law. The Borrower's contractor shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the Lender setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the Lender and its officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the Lender of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Borrower's contractor shall be primary insurance and not be contributing with any insurance or self-insurance maintained by the Lender, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the Lender. The required certificate shall be furnished by the Borrower's contractor to the Lender for the Lender's review, and no disbursement of Loan funds shall be made to the Borrower until the Lender has provided the Borrower with written notice affirming that the certificate conforms to the requirements of this Section.

3.9 **Execution of Construction Agreement.** The Borrower shall timely execute an agreement for performance of the Work with a duly licensed and qualified contractor having all training and holding all certifications and approvals required by any supplying utility prior to **June 1, 2014.**

#### 4. ASSIGNMENT AND TRANSFERS

4.1 **Transfer.** As used herein, the term "Transfer" means any total or partial sale, lease, encumbrance, assignment, or other conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of any part of or interest in the Property, or any agreement to do any of the foregoing, whether voluntary or involuntary. The term "Transfer" shall additionally include, without limitation, any transfer of an interest in the Property in a trust to or for the benefit of the Borrower or Borrower's successors, assigns or beneficiaries.

4.2 **Prohibited Transfers.** The limitations on Transfer set forth in this Section shall apply throughout the Term. The Borrower represents that it has not made or created, and agrees that it will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior written approval of the Lender. Any Transfer made in contravention of this Section shall at the Lender's discretion be void and shall be deemed to be a default under this Agreement, whether or not the Borrower knew of or participated in such Transfer.

4.3 **Permitted Transfers Without Prior Lender Approval.** The only Transfer permitted at any time without the prior approval of the Lender is the rental of the Property by the Borrower to a third party lessee.

4.4 **Permitted Transfers With Lender Approval.** The Borrower, as transferor, may transfer its interest in the Property only after (a) the Lender, in its sole and absolute discretion, has delivered to the Borrower its prior written approval of such Transfer and the transferee, and (b) the transferee has assumed the Borrower's obligations under this Agreement by signing this Agreement and such other reasonable documentation as the Lender may require. Upon approval by Lender of the Transfer and successful assumption of the Borrower's obligations under this Agreement by the transferee, the Borrower or the successor transferor party, as applicable, shall be released from all liability under this Agreement so transferred arising subsequent to the effectiveness of such Transfer.

#### 5. REPRESENTATIONS AND WARRANTIES OF BORROWER

5.1 **Representations and Warranties.** The Borrower hereby represents and warrants to the Lender as follows:

5.1.1 The Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

5.1.2 This Agreement and all other documents or instruments which have been executed and delivered by the Borrower pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Borrower enforceable by and against it in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and general principles of equity.

5.1.3 . Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement, nor the performance by the Borrower of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Borrower or will conflict with or constitute a breach of or a default under any agreement to which the Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of the Borrower, other than liens established pursuant hereto.

5.1.4 The performance of the Work will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

5.1.5 The Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or the Property, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Borrower, materially and adversely affect the Borrower's ability to repay the Loan or impair the security to be given to the Lender pursuant hereto.

5.1.6 At the time of recordation of the Deed of Trust, the Borrower will have good and marketable fee title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the Lender, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the Lender or approved in writing by the Lender.

5.1.7 Except for approved eligible administrative or personnel costs, no person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the Lender, or any person related within to such person, who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

## 6. DEFAULT AND REMEDIES

6.1 **Events of Default.** Each of the following events shall constitute a Default by the Borrower under this Agreement:

6.1.1 Failure by the Borrower to execute an agreement for performance of the Work with a duly licensed and qualified contractor having all training and holding all certifications and approvals required by any supplying utility prior to **June 1, 2014**.

6.1.2 Failure to repay the principal and any interest on the Loan that is due and payable to the Lender pursuant to this Agreement or any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement.

6.1.3 Failure by the Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Agreement any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Lender to the Borrower or, if the breach cannot be cured within thirty (30) days, the Borrower shall not be in breach so long as the Borrower is diligently undertaking to cure such breach and such breach is cured within ninety (90) days; provided, however, that if a different period or notice requirement is specified under any other provision of this Section 6, the specific provisions shall control.

6.1.4 A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Borrower to be bankrupt or insolvent, (ii) approving as properly filed a bankruptcy petition seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, or (iii) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for the Property. The occurrence of any of the events of Default in this Section shall act to accelerate automatically, without the need for any action by the Lender, the indebtedness evidenced by the Note.

6.1.5 The Borrower has assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its Property, unless the Property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of Default in this Section shall act to accelerate automatically, without the need for any action by the Lender, the indebtedness evidenced by the Note.

6.1.6 The filing of any claim of lien (other than liens approved in writing by the Lender) against the Property or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefor (including, without limitation, the posting of bonds) satisfactory to the Lender.

6.1.7 The condemnation, seizure, or appropriation of all or the substantial part of the Property, except that condemnation by the Lender, shall cause the Loan to accelerate but shall not be a Default.

6.1.8 Any Transfer other than as permitted by Section 4.

6.1.9 Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Lender in connection with any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement, proving to have been incorrect in any material and adverse respect when made.

6.2 **Remedies.** The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Lender or automatically where so specified, relieve the Lender of any obligation to make or continue the Loan and shall give the Lender the right to proceed with any and all remedies set forth in this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement, including but not limited to the following:

6.2.1 The Lender shall have the right to cause all indebtedness of the Borrower to the Lender under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The Lender may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Lender as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the Lender on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Lender in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

6.2.2 The Lender shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Borrower to perform its obligations and covenants under or to enjoin acts on things which may be unlawful or in violation of the provisions of this Agreement or any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement.

6.2.3 The Lender shall have the right (but not the obligation) to cure any monetary default by the Borrower under a loan other than the Loan. The Borrower agrees to reimburse the Lender for any funds advanced by the Lender to cure a monetary default by the Borrower upon demand therefor, together with interest thereon at the lesser of the maximum rate permitted by law or ten percent (10%) per annum from the date of expenditure until the date of reimbursement.

6.2.4 The Lender shall have the right to complete or cause the completion of any unperformed or defectively performed Work in any manner consistent with applicable law at Borrower's sole expense.

6.3 **Cumulative Remedies.** No right, power, or remedy given to the Lender by the terms of this Agreement or any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Lender by the terms of any such instrument, or by any statute or otherwise against the Borrower and any other person. Neither the failure nor any delay on the part of the Lender to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

## 7. GENERAL PROVISIONS

7.1 **Relationship of Parties.** Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Lender and the Borrower or its agents, employees or contractors, and the Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. The Borrower has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. In regards to the performance of the Work, the Borrower shall be solely responsible for all matters relating to payment of its contractors, including compliance with Social Security, withholding, and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees and subcontractors. The Borrower shall be solely responsible for its own acts and those of its agents.

7.2 **No Claims.** Nothing contained in this Agreement shall create or justify any claim against the Lender by any person with whom the Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the performance of the Work, and the Borrower shall include similar requirements in any contracts entered into for performance of the Work.

7.3 **Amendments.** No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

7.4 **Indemnification.** The Borrower shall indemnify, defend and hold the Lender, its members, officials, officers, employees, agents, successors and assigns harmless against all claims made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with the Borrower's performance of this Agreement and any other documents or instruments executed and delivered, or to be executed or delivered by the Borrower, pursuant to this Agreement, except to the extent such claim arises from the grossly negligent or willful misconduct of the Lender. Borrower's indemnification obligations shall survive the repayment of the Loan, the expiration of the Term, and the reconveyance of the Deed of Trust.

7.5 **Non-Liability of Lender Officials, Employees and Agents.** No member, official, employee or agent of the Lender shall be personally liable to the Borrower in the event of any default or breach by the Lender or for any amount which may become due to the Borrower or its successor or on any obligation under the terms of this Agreement.

7.6 **No Third Party Beneficiaries.** There shall be no third party beneficiaries to this Agreement.

7.7 **Notices, Demands and Communications.** Formal notices, demands, and communications between the Parties shall be deemed sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal address of the Parties as follows:

**BORROWER:**

[\_\_ INSERT NAME, ADDRESS & CONTACT PERSON \_\_]

**LENDER:**

City of Indian Wells  
44-950 Eldorado Drive,  
Indian Wells, California 92210-7497  
Attn: Kevin McCarthy, Finance Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

7.8 **Applicable Law.** This Agreement shall in all respects be governed by the law of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Riverside County in the State of California, and the Parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

7.9 **Parties Bound.** Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement is intended to run with the land and shall bind Borrower and its successors and assigns in the Property for the entire Term, and the benefit hereof shall inure to the benefit of the Lender and its successors and assigns.

7.10 **Attorneys' Fees.** If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

7.11 **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in

full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**7.12 Force Majeure.** In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; or court order; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the Lender be required to agree to cumulative delays in excess of one hundred eighty (180) days.

**7.13 Lender Approval.** Whenever this Agreement calls for Lender approval, consent, or waiver, the written approval, consent, or waiver of the Lender's **City Manager**, or his or her designee, shall constitute the approval, consent, or waiver of the Lender, without further authorization required from the City Council, unless authorization by the City Council is specified in this Agreement. The Lender hereby authorizes Lender's **City Manager**, or his or her designee, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Lender. Lender's **City Manager**, or his or her designee, is also hereby authorized to approve, on behalf of the Lender, requests by the Borrower for reasonable extensions of time deadlines set forth in this Agreement. The Lender shall not unreasonably delay in reviewing and approving or disapproving any proposal by the Borrower made in connection with this Agreement.

**7.14 Waivers.** Any waiver by the Lender of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Lender to take action on any breach or default of the Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Lender to any act or omission by the Borrower shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Lender's written consent to future waivers.

**7.15 Tax Consequences.** The Borrower acknowledges that it may experience tax consequences as a result of its receipt of the Loan from the Lender provided for in this Agreement and the Borrower agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

**7.16 Title of Parts and Sections.** Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

**7.17 Entire Understanding of the Parties.** This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

7.18 **Multiple Originals; Counterpart.** This Agreement may be executed in multiple original counterparts, each of which is deemed to be an original, and all such counterparts shall constitute one and the same instrument.

7.19 **Ambiguity.** The Parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any Party on the basis of such Party's draftsmanship thereof.

7.20 **Exhibits and Recitals.** All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Loan Agreement by their authorized representatives as of the day, month and year first written above.

**CITY OF INDIAN WELLS**

**[INSERT OWNER NAME]**

By: \_\_\_\_\_  
Wade G. McKinney  
City Manager

By: \_\_\_\_\_  
[Name]

By: \_\_\_\_\_  
[Name]

*Attest:*

\_\_\_\_\_  
Anna Grandys  
Chief Deputy City Clerk

*Approved As To Form:*

\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

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**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The Property is made up of land situated in the State of California, City of Indian Wells, County of Riverside, and is described as follows:

DRAFT

**EXHIBIT B**

**DESCRIPTION OF THE WORK**

DRAFT

EXHIBIT C

PROMISSORY NOTE  
(Loan – [INSERT BORROWER NAME])

\$ \_\_\_\_\_

Indian Wells, California  
\_\_\_\_\_, 2014

FOR VALUED RECEIVED, [INSERT BORROWER NAME], an individual residing at [\_\_\_\_ INSERT ADDRESS \_\_\_\_] (the "Borrower"), promises to pay to the City of Indian Wells, a municipal corporation of the State of California, located at 44-950 Eldorado Drive, Indian Wells, California 92210-7497, County of Riverside, State of California, (hereinafter referred to as "Lender"), or order, the principal sum of [INSERT LOAN AMOUNT] (\$ \_\_\_\_\_), or so much thereof as is advanced to Borrower pursuant to Article 2 of the Loan Agreement (as defined below), as provided below.

1. Loan Agreement. This promissory note (the "Note") is made pursuant to the terms of the Loan Agreement entered into between the Borrower and the Lender (the "Loan Agreement") concurrently herewith. All capitalized terms used but not defined in this Note shall have the meanings set forth in the Loan Agreement.

2. Repayment Terms; Interest. The indebtedness evidenced by this Note shall be due and payable in full on the earlier of (i) the date of any Transfer not authorized by the Lender; (ii) the date of any Default; or (iii) twenty years from the Effective Date of the Loan Agreement. The outstanding principal balance of this Note shall bear simple interest at the rate of one percent (1%) per annum; provided however, if a Default occurs, interest on the principal balance shall accrue in accordance with Section 4 of this Note. The Borrower shall have the right to prepay the indebtedness evidenced by this Note at any time without premium or penalty.

3. Security. This Note shall be secured by a Deed of Trust against the Property executed concurrently herewith and recorded by Borrower. The Deed of Trust executed herewith shall be in the form provided in Exhibit D to the Loan Agreement.

4. Acceleration Pursuant to Default. Upon the occurrence of an event of Default in the Loan Agreement, the Lender shall have the right to declare all of the principal immediately due and payable, which amount shall bear interest at the lesser of ten percent (10%) compounded annually, or the maximum amount permitted by law, from the date of Default to the date of repayment in full of the disbursed principal amount of the Loan and any interest due thereon or the Default is cured. All payments received shall be applied first to the accrued interest and second to the principal outstanding. Neither acceptance by the Lender of the payments provided for herein nor any failure by the Lender to pursue its legal and equitable remedies upon Default shall constitute a waiver of the Lender's right to require prompt payment when due of all disbursed principal and interest owing or to declare a Default and exercise all of its rights under

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this Note and the Loan Agreement.

5. No Offset. The Borrower hereby waives any rights of offset it now has or may hereafter have against the Lender, its successors and assigns, and agrees to make the payment called for herein in accordance with the terms of this Note.

6. Waiver; Attorney's Fees. The Borrower, for itself, its heirs, legal representatives, successors and assigns, waives diligent presentment, protest and demand, and notice of protest, dishonor and non-payment of this Note, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitations as a defense to any demand on this Note or agreement to pay the same, and agrees to pay all costs of collection when incurred, including reasonable attorneys' fees. If an action is instituted on this Note, the undersigned promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.

7. Manner and Place of Payment. All payments of principal and interest shall be payable in lawful money of the United States of America at the office of the Lender as set forth above or at such other address as the Lender may provide to the Borrower by notice in accordance with Section 7.7 of the Loan Agreement.

8. Recourse Provisions.

(a) Prior to recordation against the Property of the Deed of Trust, this Note shall be fully recourse against the Borrower and any judgment or execution thereof entered in any action, legal or equitable, on this Note may be enforced personally against the Borrower.

(b) Following recordation against the Property of the Deed of Trust, and except as provided below, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan, and the sole recourse of the Lender with respect to the principal of, or interest on, the Note shall be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Note of all the rights and remedies of the Lender thereunder, or (b) be deemed in any way to impair the right of the Lender to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note, except as hereafter set forth. Nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the Lender pursuant to the terms of the Loan Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any

insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

9. Assignment. The Lender's rights under this Note may be assigned by the Lender in its discretion.

10. Conflict. If any term or provision of this Note conflicts with any term or provision of the Loan Agreement, the term of provision of the Loan Agreement shall control to the extent of such conflict.

11. Binding. The terms, covenants and conditions contained herein shall be binding upon the heirs, successors and assigns of the Borrower and shall inure to the benefit of the heirs, successors and assigns of the Lender.

12. Severability. The unenforceability or invalidity of any provision or provisions of this Note as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other person or circumstances, and all provisions of this Note, in all other respects, shall remain valid and enforceable.

13. Indemnification. The Borrower agrees to indemnify and hold the Lender and its successors and assigns harmless from and against all costs of collection, including attorneys' and expert witness fees and all cost of suit, in the event the unpaid principal sum of this Note or any interest accrued on this Note is not paid when due.

14. Time is of the Essence. Time is of the essence of each provision of this Note.

15. Assumption. The Borrower's obligations under this Note may not be assigned or otherwise transferred or assumed, without the prior written consent of the Lender, which may be given or withheld in the sole and absolute discretion of the Lender.

PRIOR TO SIGNING THIS PROMISSORY NOTE, THE BORROWER HAS READ AND UNDERSTANDS ALL OF ITS PROVISIONS. THE BORROWER AGREES TO THE TERMS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS NOTE.

OWNER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT D**  
**DEED OF TRUST**

DRAFT

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of Indian Wells  
44-950 Eldorado Drive,  
Indian Wells, California 92210-7497  
Attn: Anna Grandys, City Clerk

[ APN ]

**DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

(Loan - [INSERT BORROWER NAME])

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of \_\_\_\_\_, 20\_\_, by and among [INSERT BORROWER NAME], ], an individual residing at [ INSERT ADDRESS ] ("Trustor"), [INSERT TITLE COMPANY], a California corporation, ("Trustee"), and the City of Indian Wells, a public body, corporate and politic ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in the City of Indian Wells, County of Riverside, State of California, that is described in the attached Attachment A, incorporated herein by this reference (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter

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acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

A. Payment of just indebtednesses of Trustor to Beneficiary as set forth in the Promissory Note (defined in Article 1 below) until paid or cancelled. Said principal and other payments shall be due and payable as provided in the Promissory Note. Said Promissory Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and

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all extensions thereof, however evidenced; and

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein; and

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents (defined in Article 1 below).

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

ARTICLE 1  
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain Loan Agreement between Trustor and Beneficiary, dated \_\_\_\_\_, providing for the Beneficiary to loan to the Trustor in the amount of up to [INSERT LOAN AMOUNT] (\$) \_\_\_\_\_ for the purpose of financing utility lateral installation work to be performed on Trustor's Property as part of the Indian Wells Village Undergrounding District No. 2 Project.

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Promissory Note, the Loan Agreement and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means that certain promissory note in the amount of [INSERT LOAN AMOUNT] (\$) \_\_\_\_\_ of even date herewith executed by the Trustor in favor of the Beneficiary, the payment of which is secured by this Deed of Trust.

Section 1.4 The term "Principal" means the aggregate of the amounts required to be paid under the Note.

ARTICLE 2  
MAINTENANCE AND MODIFICATION OF  
THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, alterations, replacements, improvements, and renewals on the Security. The Trustee shall not commit or permit waste on or to the Security, or

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commit, suffer, or permit any act or violation of law to occur on it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Riverside County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

#### Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law. As to these exceptions, Beneficiary will grant and/or direct the Trustee to grant such easements.

#### Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to expiration of any applicable cure period following written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for

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the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the sums secured by this Deed of Trust with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents which continues beyond any applicable cure period, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents upon expiration of any applicable cure period. Trustor agrees that commencing upon the expiration of any applicable cure period set forth in such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents which continues beyond any applicable notice and cure period, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust which continues beyond any applicable notice and cure period, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

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All rents and revenues collected subsequent to the expiration of any applicable cure period set forth in the written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this Deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure indebtedness held by Beneficiary.

### ARTICLE 3 TAXES AND INSURANCE; ADVANCES

#### Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities so contested. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the

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same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the lesser of ten percent (10%) per annum or maximum rate permitted by law, shall become an additional obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

### Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all other obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to the Beneficiary's receipt of the entire Principal and all amounts secured by this Deed of Trust.

### Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

## ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

### Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property ("Funds") are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary to the extent of the outstanding balance due on the Note. The Beneficiary is authorized and empowered (but not required) to collect and receive any funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured

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hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section are subject to the rights of any senior mortgage lender.

ARTICLE 5  
AGREEMENTS AFFECTING THE PROPERTY; FURTHER  
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

With the exception of emergencies, at any and all reasonable times upon prior notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

ARTICLE 6  
HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as are used in construction of the improvements on the Property or as may be customarily kept and used in and about residential property.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii)

above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns (other than purchasers at a foreclosure sale unless such Hazardous Materials Claims were caused by Trustor) from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release (but excluding any release or discharge by Beneficiary), discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgment, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the

Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of Hazardous Materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or reasonably should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the lesser of ten percent (10%) or the maximum rate permitted by law, until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

## ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

### Section 7.1 Events of Default.

The following shall constitute events of Default: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents; or (3) failure to make any payment or perform any of Trustor's other covenants, agreements, or obligations under any other debt instruments secured by the Property; which default shall not be cured within the times and in the manner provided therein.

### Section 7.2 Acceleration of Maturity.

If an event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the event of Default and the unpaid Principal of the Note together with any accrued interest shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan

Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

### Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any event of Default or Notice of Default and Election to Sell (as defined below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Default and Election to Sell and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Default and Election to Sell"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Riverside County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

### Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall give notice to the Trustee (the "Notice of Sale") and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and Election to Sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and

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Election to Sell and after Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other amounts owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

#### Section 7.5 Receiver.

If an event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

#### Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

#### Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such event of Default or acquiescence

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therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any event of Default then made or of any subsequent event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

#### Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

#### Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under the Note or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

Section 7.11 Non-Recourse

Except as provided below, the Trustor shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan or the performance of the covenants of the Trustor hereunder or under the other Loan Documents. The sole recourse of the Beneficiary with respect to the principal of, or interest on, the Note and defaults by Trustor in the performance of its covenants under the Loan Documents shall be to the Security; provided, however, that nothing contained in the foregoing limitation of liability shall be deemed in any way to impair the right of the Beneficiary to assert the unpaid principal amount of the Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note and the performance of the Trustor's obligations under the Loan Documents, except as hereafter set forth; nothing contained herein is intended to relieve the Trustor of its obligation to indemnify the Beneficiary under the Loan Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes or assessments that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes and assessments; (iii) the fair market value of any personal property or fixtures removed or disposed of by Trustor other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 8  
MISCELLANEOUS

Section 8.1 Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

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Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary shall be addressed to:

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells, California 92210-7497  
Attn: Finance Director

and (2) if intended for Trustor shall be addressed to:

[ \_\_\_ INSERT NAME, ADDRESS & CONTACT PERSON \_\_\_ ]

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation is created herein binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or

partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Riverside County.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a Deed of Trust and any reference to a Deed of Trust shall also refer to a mortgage.

Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not

obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the property encumbered by this Deed of Trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by the regulatory agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Internal Revenue Code.

Section 8.15 No Preference Interpretation.

This Deed of Trust is the product of mutual drafting by the Parties and no interpretation shall be given which favors or disfavors the drafter.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

## ACKNOWLEDGMENT

State of California  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
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 \_\_\_\_\_ (Seal)

ATTACHMENT A TO DEED OF TRUST

LEGAL DESCRIPTION OF PROPERTY

The Property is made up of land situated in the State of California, City of Indian Wells, County of Riverside, and is described as follows:

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## AGREEMENT SUMMARY

### **OWNER PARTICIPATION AGREEMENT – VILLAGE UNDERGROUNDING DISTRICT #2**

Parties: City of Indian Wells, and  
Property Owners within Indian Wells Village Undergrounding  
District No.2 Assessment District

Responsible  
Department(s): Public Works

Purpose:

To acknowledge and set forth obligations of Property Owners related to the Indian Wells Village Undergrounding District No. 2 Project ("Project") for the installation of utility laterals so as to receive service from the lines of the supplying utility. The Project involves the undergrounding of all utilities within the Project area by Property Owners and utilities.

Contract Term:

The Agreement requires Property Owners to commence work to install the necessary utility laterals no later than June 1, 2014 (formerly December 31, 2013), and to complete all work within three (3) months of the commencement date of the work.

Obligations of Property Owners:

The agreement provides that Property Owners must require their contractors to procure and maintain insurance covering the work and the City. Property Owners are also required to acknowledge responsibility for the cost of the work and for obtaining any required permits and approvals. Property Owners must allow City representatives to inspect the work during normal hours and to perform a final inspection upon completion of the work. Property Owners are additionally prohibited from transferring any interest in real property within the Project area prior to completion of the work or expiration of the Agreement without the prior written approval of the City.

Contract Amount:

Property Owners are required to pay the full cost of the work. The City is under no obligation to pay any monies under the Agreement.

**CITY OF INDIAN WELLS  
OWNER PARTICIPATION AGREEMENT**

**1. PARTIES AND DATE.**

This Owner Participation Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the City of Indian Wells, a municipal corporation of the State of California, located at 44-950 Eldorado Drive, Indian Wells, California 92210-7497, County of Riverside, State of California, (hereinafter referred to as "City") and [NAME] , an individual residing at [ADDRESS] (hereinafter referred to as "Owner"). City and Owner are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Purpose of Agreement**

The purpose of this Agreement is to acknowledge Owner's obligations related to the Indian Wells Village Undergrounding District No. 2 Project ("Project") and to authorize Owner to participate in the City's bidding program for selection of a contractor to perform the Project work ("Bidding Program").

**2.2 Project**

The City adopted Resolution No. 2013-27 creating Indian Wells Village Undergrounding District No. 2 ("District No. 2") in accordance with Chapter 13.04 of the Indian Wells Municipal Code. District No. 2 requires all property owners and utilities within the Project area to underground their utilities within the time prescribed by the City Council. Property owners within District No. 2 are responsible for the installation of their individual utility lateral so as to receive service from the lines of the supplying utility. The Project work includes all necessary facility changes on the premises of any person owning, operating, leasing, occupying or renting property within District No. 2 for the purpose of receiving service from the lines of the supplying utility at the new location.

**2.3 Owner**

Owner is the fee owner of that certain real property and the improvements thereon ("Site"), the legal description of which is set forth in the attached Exhibit A, located within the Project area as established by the map entitled "Proposed Boundaries of the Indian Wells Village Undergrounding District No. 2 Assessment District, City of Indian Wells, County of Riverside, State of California," which map is on file in the office of the City Clerk and incorporated herein by this reference. By this Agreement, the Parties acknowledge that Owner shall be responsible for the timely performance of all necessary Project work for the installation of utility laterals on the Site so as to receive service from the lines of the supplying utility ("Work"), which Work shall be completed in accordance with the terms of this Agreement and all applicable laws and regulations.

## **2.4 City Bidding Program**

In order to obtain the most advantageous prices from qualified contractors for installation of the utility laterals for property owners within District No. 2, the City shall organize a Bidding Program for selection of a contractor to perform the Project work. Each property owner within District No. 2 shall be authorized to voluntarily participate in the Bidding Program.

### **3. TERMS.**

#### **3.1 Owner Representations**

##### **3.1.1 Authority**

Owner represents and warrants to City that Owner has the full right, power and lawful authority to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Owner has been fully authorized.

##### **3.1.2 No Conflict**

Owner represents and warrants that Owner's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Owner is a party or by which Owner is bound.

##### **3.1.3 No Owner Bankruptcy**

Owner represents and warrants that neither Owner nor the Site is the subject of a bankruptcy proceeding.

##### **3.1.4 Lease and Other Interests**

Owner represents and warrants that no other persons, other than those that have consented to representation by Owner, have a lawful interest in or the right to possess all or any portion of the Site.

##### **3.1.5 Fee Title**

Owner represents and warrants that at the time of the execution of this Agreement, Owner owns fee simple title to the Site and has not entered into or executed any agreement or document which would transfer all or any part of Owner's interest in the Site to any third party.

##### **3.1.6 No Impairment**

Owner represents and warrants that Owner shall not do anything which would impair Owner's title to or right to use the Site until expiration of this Agreement or completion of the Work, whichever occurs later.

## **3.2 Responsibilities of Owner**

### **3.2.1 Scope of Work**

Owner shall make all improvements to the Site necessary to complete the Work in one phase in accordance with the Schedule of Performance and the plans, drawings and documents submitted by the Owner and approved by the City as set forth herein. All such Work shall be performed by a licensed contractor having all training and holding all certifications and approvals required by any supplying utility. Owner shall be solely responsible for determining the means, methods and details of performing the Work.

### **3.2.2 Schedule of Performance**

Owner shall commence Work no later than **June 30, 2014**, and shall complete all Work and satisfy all other obligations and conditions of this Agreement within **three (3)** months of the commencement date of the Work ("Schedule of Performance").

### **3.2.3 Permits and Approvals**

Before commencement of the Work upon the Site, Owner shall, at its own expense, secure or cause to be secured any and all licenses, permits and approvals which may be required by the City, any public agency or other entity with jurisdiction. The execution of this Agreement does not constitute the granting by the City of any licenses, permits and approvals required by the City.

### **3.2.4 Cost of Work**

All of the cost of performing the Work shall be borne solely by and be the responsibility of the Owner.

### **3.2.5 Insurance Requirements**

Owner's contractor shall take out and maintain throughout the term of this Agreement or completion of the Work, whichever is later, a commercial general liability policy in the amount of One Hundred Thousand Dollars (\$100,000) combined single limit, and a comprehensive automobile liability policy in the amount of One Hundred Thousand Dollars (\$100,000), combined single limit, or such other policy limits as the City may approve at its discretion, including contractual liability, as shall protect the Owner and the City from claims for such damages. Such policy or policies shall be written on an occurrence form basis. Owner's contractor shall also furnish to the City evidence satisfactory to the City that Owner's contractor carries workers' compensation insurance as required by law. Owner's contractor shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the City and its officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the City of any material change, cancellation or termination of the coverage at least thirty (30)

days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Owner's contractor shall be primary insurance and not be contributing with any insurance or self-insurance maintained by the City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City. The required certificate shall be furnished by Owner's contractor to the City for the City's review, and Owner's contractor shall not commence any Work until the City has provided Owner with written notice affirming that the certificate conforms to the requirements of this Section.

### **3.2.6 Site Access**

For purposes of assuring compliance with this Agreement, representatives of the City shall have the right to access the Site, without charges or fees, at normal hours from the Effective Date of this Agreement until the later of the expiration of this Agreement or satisfactory completion of the Work. Owner shall cooperate with City representatives in the performance of any inspection of the Work or of any activity made necessary due to a Default by Owner. The City or its representatives shall, except in emergency situations, notify the Owner prior to exercising its rights pursuant to this Section.

### **3.2.7 Compliance With Laws**

Owner shall carry out the Work in conformity with all applicable laws and regulations, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the Indian Wells Municipal Code, and all applicable requirements promulgated by the supplying utility.

### **3.2.8 Site Conditions**

Owner shall take all necessary precautions to prevent the release into the environment of any hazardous materials that are located in, on or under the Site. Such precautions shall include compliance with all governmental requirements with respect to hazardous materials. In addition, Owner shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards prevailing in the industry, to the extent such standards exceed applicable governmental requirements, as respects the disclosure, storage, use, removal and disposal of hazardous materials. Owner shall cause each release of hazardous substances in, on or under the Site to be remediated in accordance with all governmental requirements.

Owner agrees to indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any hazardous materials on, under, in or about, or the transportation of any such hazardous materials to or from, the site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of hazardous materials on, under, in or about, to or from, the site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or

proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment.

### **3.2.9 Liens and Stop Notices**

Owner shall not allow to be placed on the Site or any part thereof any lien or stop payment notice. If a claim of a lien or stop payment notice is given or recorded affecting the Site or any part thereof, Owner shall provide notice of the same to the City within ten (10) days of such recordation and shall, within thirty (30) days of such recording or service or within five (5) days of the City's demand whichever last occurs: (1) pay and discharge the lien or stop payment notice; (2) affect the release of the lien or stop payment notice by obtaining or recording a release bond from a surety in sufficient form and amount; or (3) take such other action that the City deems, in its sole discretion, to be satisfactory such that completion of the Work will not be affected.

### **3.2.10 Inspection of the Work**

Promptly after Owner determines that the Work is complete in conformity with this Agreement, Owner shall provide the City with notice of the same. The City or its authorized representatives may inspect the Work and approve or refuse to approve the Work. In the event the City refuses to approve the Work, the City shall provide Owner with a written statement of the reasons the City refused to approve the Work and the actions Owner must take to obtain the City's approval.

### **3.2.11 Owner Default**

Failure by Owner to perform any action or covenant required by this Agreement within the time periods provided herein following notice and expiration of any applicable period, shall constitute a "Default" under this Agreement. Upon the occurrence of any Default, Owner shall immediately, with due diligence, commence to cure, correct or remedy such Default and shall complete such cure, correction or remedy to the satisfaction of the City.

In the event Owner fails to timely or satisfactorily cure the Default, as determined by the City in its sole discretion, the City may take over and complete the Work. Owner shall be liable for the cost of completion of any Work deemed incomplete or defective by the City and such cost shall constitute a lien upon the Site and any improvements thereon.

### **3.2.12 Indemnification Obligation**

Owner shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold the City, its officers, employees and agents, harmless from, all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any of Owner's activities under this Agreement, whether such activities or performance thereof be by Owner or by anyone directly or indirectly employed or contracted

with by Owner and whether such damage shall accrue or be discovered before or after termination of this Agreement. Owner shall not be liable for property damage or bodily injury occasioned by the sole negligence of the City or its designated agents or employees.

### **3.2.13 Transfer of Interest in Site**

For the period commencing upon the Effective Date of this Agreement and until expiration of this Agreement or completion of the Work, whichever is later, no voluntary or involuntary successor in interest of Owner shall acquire any rights or powers under this Agreement, whether by total or partial sale, lease, encumbrance, assignment, or other conveyance, or any trust or power, or any transfer in any other mode or form, nor shall Owner make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site without prior written approval of the City. The City reserves sole and absolute discretion to approve or disapprove a request for transfer made pursuant to this Section, upon Owner's delivery of written notice to the City requesting such approval.

## **3.3 Bidding Program**

### **3.3.1 Purpose**

In order to obtain the most advantageous prices from qualified contractors for installation of the utility laterals for property owners within District No. 2, the City shall organize a Bidding Program for selection of a contractor to perform the Project work. Participation in the Bidding Program shall be voluntary. However, those property owners electing not to participate in the Bidding Program shall remain solely obligated for ensuring that any Project work is performed by a licensed contractor having all training and holding all certifications and approvals required by any supplying utility.

### **3.3.2 [Intentionally Omitted]**

### **3.3.3 Participation in Bidding Program**

Owner may participate in the Bidding Program by sending written notice to City confirming Owner's election utilizing the form attached hereto as Exhibit B. The form shall be submitted no later than thirty (30) days prior to the date scheduled for solicitation of bids. Following selection of the contractor, Owner shall enter into a contract with the contractor to perform the Work in accordance with this Agreement including all applicable deadlines. Such contract between Owner and the contractor shall expressly provide that the City is an intended third party beneficiary.

## **3.4 Termination**

### **3.4.1 Termination by the City**

City may terminate this Agreement for any reason and without cause by providing written notice of termination to Owner. The Agreement shall be deemed terminated from the date of the notice of termination of this Agreement by the City to Owner, and there shall be no further rights or obligations between the Parties.

### **3.4.2 Termination by Owner**

Owner may not terminate this Agreement except for default by the City and an opportunity to cure. Owner must provide written notice to the City of any alleged default and City shall have sixty (60) days to cure such default. Termination of this Agreement by Owner shall not relieve Owner of its obligation to perform the Work on the Site.

## **3.5 General Provisions**

### **3.5.1 Relationship between City and Owner**

It is hereby acknowledged that the relationship between the City and Owner is not that of a partnership or joint venture and that the City and Owner shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein, the City shall have no rights, powers, duties or obligations with respect to the Site. Owner agrees to indemnify, hold harmless and defend the City from any claim made against the City related to development, operation, maintenance or management of the Site.

### **3.5.2 Selection of Contractor**

All of the terms, covenants and conditions of this Agreement shall be binding upon Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

### **3.5.3 City's Representative**

The City hereby designates **Public Works Director** or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Owner shall not accept direction or orders from any person other than the City's Representative or his or her designee with respect to this Agreement.

### **3.5.4 Coordination of Services**

Owner agrees to work closely with City staff to coordinate performance of the Work as may be necessary to ensure efficient and cost effective completion of the Project.

### **3.5.5 Delay; Extension of Time of Performance**

In the event of a delay in the Work affecting completion in accordance with the Schedule of Performance, Owner shall notify the City immediately. The City may, in its sole and absolute discretion, extend the time of performance under this Agreement if it finds good cause to do so, or find Owner in Default and take over and complete the Work.

### **3.5.6 Standard of Care**

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Owner warrants that all contractors shall have sufficient skill and experience to perform the Work assigned to them. Owner warrants that its contractor shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement or completion of the Work, whichever is later.

### **3.5.7 Safety**

Owner shall cause its contractor to execute and maintain the Work and the Site so as to avoid injury or damage to any person or property. In carrying out the Work, Owner shall at all times be in compliance with and shall cause its contractor to be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.5.8 Delivery of Notices**

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

**OWNER:**

[NAME, ADDRESS]

**CITY:**

City of Indian Wells  
44-950 Eldorado Drive,  
Indian Wells, California 92210-7497  
Attn: Ken Seumalo P.E., Public Works Director

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

### **3.5.9 Cooperation; Further Acts**

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

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### **3.5.10 Attorneys' Fees**

If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

### **3.5.11 Entire Agreement**

This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. Except as provided for herein, this Agreement may only be modified by a writing signed by both Parties.

### **3.5.12 Governing Law**

This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

### **3.5.13 Time of Essence**

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

### **3.5.14 Legal Advice**

Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have hereunder; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

### **3.5.15 Amendment; Modification**

Except as otherwise noted herein, no supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

### **3.5.16 Waiver**

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

### **3.5.17 No Third Party Beneficiaries**

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There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

**3.5.18 Invalidity; Severability**

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

**3.5.19 Counterparts**

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

**3.5.20 Exhibits and Recitals**

All Exhibits and Recitals contained herein are hereby incorporated into this Agreement by this reference.

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IN WITNESS WHEREOF, the Parties hereto have executed this Owner Participation Agreement by their authorized representatives as of the day, month and year first written above.

CITY OF INDIAN WELLS

[NAME]

By: \_\_\_\_\_  
Wade G. McKinney  
City Manager

By: \_\_\_\_\_  
NAME

By: \_\_\_\_\_  
NAME

*Attest:*

\_\_\_\_\_  
Anna Grandys  
Chief Deputy City Clerk

*Approved As To Form:*

\_\_\_\_\_  
Stephen P. Deitsch  
City Attorney

*Approved As To Form:*

\_\_\_\_\_  
Ken Seumalo P.E.  
Public Works Director

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**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF SITE**

Lot ~~XX~~ of Indian Wells Village Unit 1, per recorded Final Map, MB 37, page 21.

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***Indian Wells City Council***

***February 6, 2014***

***Staff Report – Finance Department***

**Receive and File the City Treasurer’s Cash Balance and Investment Report for September 2013**

**RECOMMENDATION:**

City Council Receive and File the City Treasurer’s Cash Balance and Investment Report for the month of September 2013.

**DISCUSSION:**

Background:

The Treasurer’s report presents the City’s cash activity and investment portfolio on a monthly basis. The report provides reconciliation between investment balances and City ledger balances. The report provides information on the investment type, dates of maturities, costs, current market value of securities, and rates of interest.

The City’s investment policy is designed to maximize the productive use of assets entrusted to its care and to invest and manage those funds wisely and prudently. Criteria for selecting investments and the order of priority are: (1) safety, (2) liquidity and (3) yield. It is the policy of the City of Indian Wells to invest public funds in a manner which will provide the maximum security of the City’s capital while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds; and beyond that, to maximize return within an acceptable and defined level of risk.

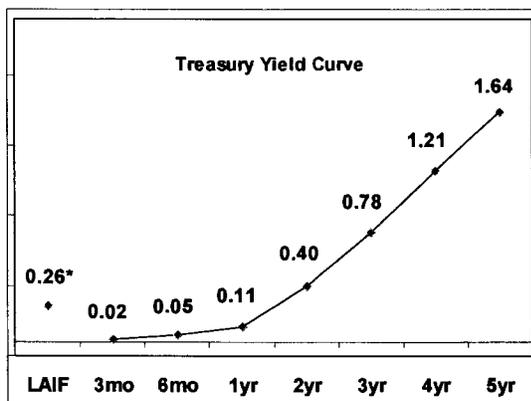
As a City Government, the City of Indian Wells is required to maintain a written investment policy in compliance with legal requirements of Government Code section 53600. Under the Government Code, the City is prohibited from investing in the equity markets like stocks, mutual funds, inverse floaters, or interest only strips; to name just a few. Consequently, the City’s portfolio is not subject to the same volatility we have seen in the financial markets. While no portfolio is free from risk the primary objective of the City’s portfolio is safety. Risk in the City’s portfolio is carefully managed through our established policy. Investments of the City of Indian Wells are undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The City invests in: U.S. Treasuries, Federal Agency Securities, FDIC insured bank certificates of deposit, bonds, and overnight cash investments.

**FISCAL IMPACT:**

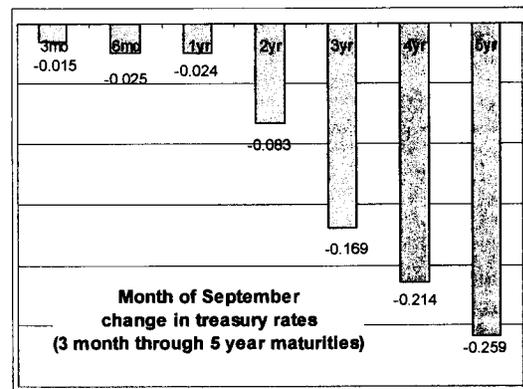
As of September 30, 2013, the City's cash and investments totaled \$38,924,302, of which 98% was invested in Federal Agency Issues, Treasury Securities, Medium Term Notes, Bank Certificates of Deposit (CDs), Municipal Securities and the Local Agency Investment Fund (LAIF). The City's portfolio earned a 1.4% rate of return and remains in compliance with all State laws and the City's Investment Policy.

Consistent with most municipal agencies and many private sector companies, the revenues received and the expenditures reflected within the month are not necessarily related to the current month. The increase or decrease to cash on a monthly basis is not a reflection of the health of the City as a whole. Cash flow citywide will vary month to month as taxes, assessments, and seasonal tourism revenue is received.

The investments reflected in this investment report are booked "Marked-to-Market", meaning the market value of City's investments is updated on a monthly basis. This method provides a clear depiction of the value of the City's portfolio on a monthly basis subject to the performance of the investment market. The City of Indian Wells maintains a buy and hold investment philosophy. While Mark to Market reporting is important to establish current market value it doesn't truly affect the City in that investments acquired by the City are held to maturity. Due to routine fluctuations in the marketplace, the City may have some investments with a current market value that is greater or less than recorded value. This difference has no effect on investment yield as the City intends to hold securities to maturity. Generally accepted accounting principles (GAAP) require that market gains and losses be reported as interest earnings or losses at year-end.



\*Estimated LAIF apportionment rate.



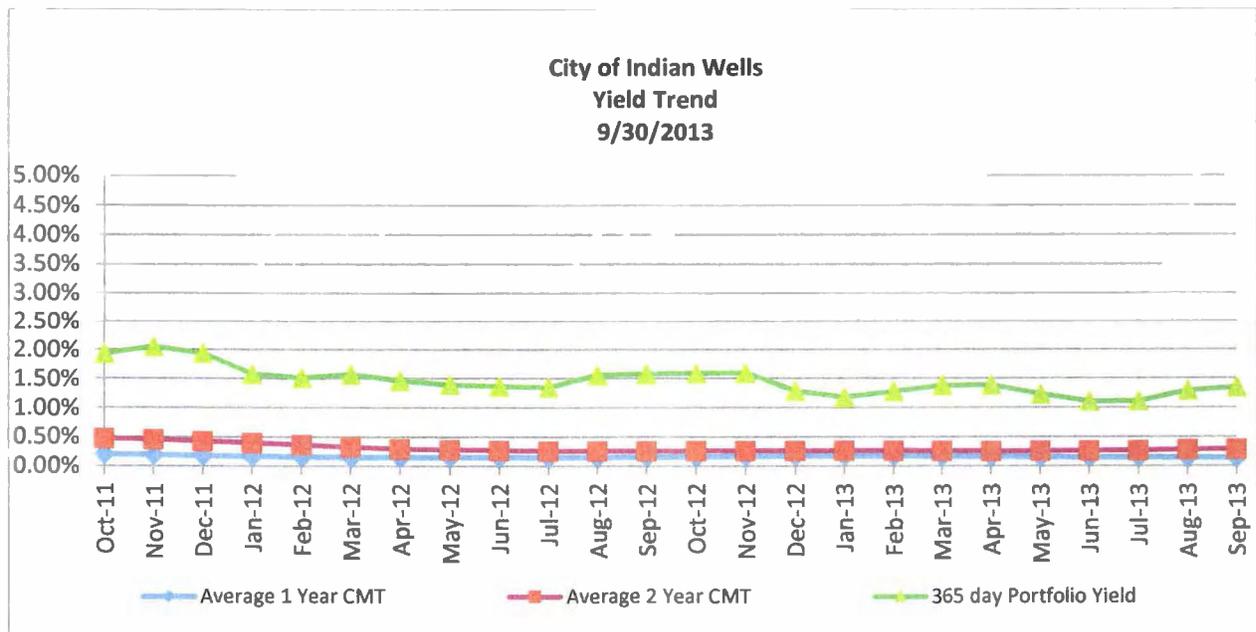
Source: Bloomberg; rates as of market close 9/30/13.

# INDIAN WELLS

## Benchmarking Performance of the Portfolio

It's impossible to manage what you can't measure. Benchmarking is the process that appropriately compares and measures investment performance. Benchmarking the portfolio allows the City to track performance, manage investment and re-investment risk, and monitor duration relative to current markets. The City has chosen to benchmark the portfolio off the one and two year US Constant Maturity Treasury (CMT). These preferred benchmarks are consistent with the city's investment policy; authorizing investments, maturity structure, diversification, percentage limitations, and objectives of the portfolio.

## Performance of the Portfolio



## **ATTACHMENT(S):**

City Treasurer's Cash Balance and Investment Report for the month of September 2013

**The City of Indian Wells  
Summary by Type  
September 30, 2013**

Security Type	Number of Investments	Par Value	Remaining Cost	% of Portfolio	Average YTM 365	Average Days to Maturity
Bank Certificates of Deposit	12	3,000,000.00	3,000,000.00	7.70	1.233	1,153
Certificates of Deposit - S & L	1	250,000.00	250,000.00	0.64	1.267	131
Managed Pool Accounts - LAIF	2	4,952,815.29	4,952,815.29	12.71	0.257	1
Money Market Sweep/Checking Account	5	674,807.24	674,807.24	1.73	0.249	1
Medium Term Corporate Notes	8	8,000,000.00	8,052,940.00	20.67	2.618	983
Federal Agency Issues - Callables	15	22,000,000.00	22,022,558.00	56.54	1.188	1,675
<b>Total and Average</b>	<b>43</b>	<b>38,877,622.53</b>	<b>38,953,120.53</b>	<b>100.00</b>	<b>1.352</b>	<b>1,240</b>

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## NET CASH & INVESTMENT SUMMARY SEPTEMBER, 2013

	<u>September</u> <u>2013</u>	<u>September</u> <u>2012</u>
<b>GENERAL FUND</b>		
101- GENERAL	\$ 1,761,046.36	\$ 3,501,312.15
<b>TOTAL GENERAL FUND</b>	<u>1,761,046.36</u>	<u>3,501,312.15</u>
 <b>SPECIAL REVENUE FUNDS</b>		
202 - TRAFFIC SAFETY	0.43	6,540.27
203 - PUBLIC SAFETY 1/2 CENT SALES TAX	5,963.69	4,374.07
204 - MEASURE "A"	40,506.27	10,145.74
209 - F.A.M.D. #1	1,884,905.07	1,675,996.16
210 - SCAQMD (VEHICLE REG.)	1,595.35	0.33
211 - AB 3229 COPS FUNDING	0.83	25,895.83
214 - GAS TAX 2103 MAINTENANCE	30,403.56	63,287.27
215 - GAS TAX 2105 MAINTENANCE	0.24	0.44
216 - GAS TAX 2106 CONSTRUCT/MAINT	0.42	0.97
217 - GAS TAX 2107 MAINTENANCE	0.31	0.77
218 - GAS TAX 2107.5 ENG./ADMIN	2,605.16	2,083.16
228 - EMERG. UPGRADE SERVICES	2,971,457.02	3,112,383.00
247 - AB 939 RECYCLING FUND	159,514.40	116,348.24
248 - SOLID WASTE	197,621.49	200,296.42
251 - STREET LIGHTING DISTRICT 2000-1	3,679.28	3,787.22
252 - HOUSING AUTHORITY	0.00	308,847.80
253- INDIAN WELLS VILLAS OPERATIONS	302,725.12	301,314.12
254- MOUNTAIN VIEW VILLAS OPERATIONS	329,555.00	328,017.00
256- HOUSING AUTHORITY	(19,829.00)	0.00
260 - IWGR OPERATIONS	1,216,937.48	1,057,565.98
271 - ELDORADO DRIVE LLMD	78,035.83	76,378.87
272 - MONTECITO/STARDUST LLMD	2,904.84	7,239.16
273 - CASA DORADO LLMD	3,209.23	2,337.04
274 - THE COVE LLMD	3,194.72	2,454.94
275 - SH 111/IWGR (ENTRANCE) LLMD	286,966.32	302,087.56
276 - CLUB/IW LANE LLMD	49,194.42	48,558.51
277 - COLONY LLMD	32,672.89	37,418.51
278 - COLONY COV ESTATES LLMD	51,612.31	48,564.63
279 - DESERT HORIZONS LLMD	49,405.83	39,809.41
280 - MOUNTAIN GATE LLMD	69,723.21	71,180.69
281 - MOUNTAIN GATE ESTATES LLMD	33,119.55	29,959.54
282 - VILLAGIO LLMD	180,780.11	173,695.02
283 - VAIDYA LLMD	28,899.32	28,806.11
284 - CLUB, SOUTH OF 111 LLMD	9,189.47	8,413.65
285 - MONTELENA LLMD	10,096.04	15,781.34
286 - SUNDANCE LLMD	3,543.17	599.37
287 - PROVINCE LLMD	56,884.98	56,741.82
288 - PROVINCE DBAD	385,214.30	327,889.08
<b>TOTAL SPECIAL REVENUE FUNDS</b>	<u>8,462,288.66</u>	<u>8,494,800.04</u>
 <b>CAPITAL PROJECT FUNDS</b>		
314 - PARK-IN-LIEU FEES	2,003.20	0.20
315 - CITYWIDE PUBLIC IMPROVEMENT FEE	4,985.26	57,507.26
316 - CAPITAL IMPROVEMENT	6,374,192.78	9,028,824.25
319 - ART IN PUBLIC PLACES	379,495.67	278,914.65
321 - HIGHWAY 111 CIRCULATION IMP FEE	9.70	9.70
<b>TOTAL CAPITAL PROJECT FUNDS</b>	<u>6,760,686.61</u>	<u>9,365,256.06</u>

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CITY OF INDIAN WELLS  
**NET CASH & INVESTMENT SUMMARY SEPTEMBER, 2013**  
 PAGE 2

	<u>September</u> <u>2013</u>	<u>September</u> <u>2012</u>
<b>REPLACEMENT FUNDS</b>		
326 - INFRASTRUCTURE CAPITAL	6,925,536.00	6,893,225.00
327 - FF&E ROLLING STOCK CAPITAL	2,267,010.00	2,256,434.00
328 - GOLF RESORT CAPITAL	3,928,968.00	3,910,665.00
329 - HOUSING VILLAS CAPITAL	2,239,080.00	8,674,733.00
330 - FACILITIES CAPITAL	2,267,049.00	2,256,434.00
<b>TOTAL REPLACEMENT FUNDS</b>	<u><b>17,627,643.00</b></u>	<u><b>23,991,491.00</b></u>
<b>SUCCESSOR AGENCY FUNDS</b>		
453 - RDA (WHITewater)	1,064,470.64	0.77
456 - RDA OBLIGATION RETIREMENT	0.00	(2,550,717.91)
<b>TOTAL SUCCESSOR AGENCY FUNDS</b>	<u><b>1,064,470.64</b></u>	<u><b>(2,550,717.14)</b></u>
<b>INTERNAL SERVICE FUNDS</b>		
601 - OPEB BENEFIT FUND	552,193.51	1,125,995.28
<b>TOTAL INTERNAL SERVICE FUNDS</b>	<u><b>552,193.51</b></u>	<u><b>1,125,995.28</b></u>
<b>RESERVE FUNDS</b>		
602 - COMPENSATED ABSENCES	536,205.00	533,703.00
603 - SELF INSURANCE	120,156.00	752,145.00
<b>TOTAL RESERVE FUNDS</b>	<u><b>656,361.00</b></u>	<u><b>1,285,848.00</b></u>
<b>TRUST &amp; AGENCY FUNDS</b>		
732 - SPECIAL DEPOSITS	1,201,948.23	182,320.97
760 - VISITOR COMMITTEE	369,330.58	439,103.23
<b>TOTAL TRUST &amp; AGENCY FUNDS</b>	<u><b>1,571,278.81</b></u>	<u><b>621,424.20</b></u>
<b>TOTAL ALL FUNDS</b>	<u><u><b>38,455,968.59</b></u></u>	<u><u><b>45,835,409.59</b></u></u>
<b>FISCAL AGENTS</b>		
253 - NAT'L CORE INDIAN WELLS VILLAS	766,004.04	807,740.15
254 - NAT'L CORE MOUNTAIN VIEW VILLAS	696,526.99	532,111.24
260 - INDIAN WELLS GOLF RESORT	304,383.28	811,432.08
453 - UNION BANK OF CALIFORNIA TRUSTEE	780,686.02	788,676.46
<b>TOTAL FISCAL AGENTS</b>	<u><b>2,547,600.33</b></u>	<u><b>2,939,959.93</b></u>
<b>TOTAL ALL FUNDS &amp; FISCAL AGENTS</b>	<u><u><b>\$ 41,003,568.92</b></u></u>	<u><u><b>\$ 48,775,369.52</b></u></u>

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City of Indian Wells			
<b>Bank Reconciliation Report - City Held Cash</b>			
Finance Department			
MONTH:	September 30, 2013		
Investment #	Investment Type	Investment Description	Book Value
<b>Bank Checking &amp; Sweep</b>			
1		Pacific Western Bank - Sweep 45-301117	\$ 660,248.17
2		Pacific Western Bank - Accts. Payable 45-523411	0.00
3		Pacific Western Bank - Payroll 45-501752	0.00
4		Union Bank of CA - Sweep Investment 217-0000121	13,159.07
19		Petty Cash	1,400.00
			<b>674,807.24</b>
<b>Managed Pool Accounts</b>			
21		Local Agency Investment Fund - City 98-33-385	4,952,814.22
23		Local Agency Investment Fund - RDA 65-33-007	1.07
			<b>4,952,815.29</b>
<b>Bank Certificates of Deposit</b>			
281		Certificate of Deposit-Pacific Western Bank 126418	250,000.00
316		Certificate of Deposit-GE Capital Retail Bank 36161NYT9	250,000.00
317		Certificate of Deposit-Ally Bank 02005QF65	250,000.00
319		Certificate of Deposit-Discover Bank 254671BH2	250,000.00
320		Certificate of Deposit-GE Capital Financial Inc. 36160YMZ	250,000.00
329		Certificate of Deposit-Sallie Mae	250,000.00
330		Certificate of Deposit-SAFR National Bank	250,000.00
336		Certificate of Deposit-Wells Fargo Bank 94986TLX3	250,000.00
337		Certificate of Deposit-Am Ex Centurion 02587DKR8	250,000.00
338		Certificate of Deposit-Goldman Sachs Bank 38143A5L5	250,000.00
339		Certificate of Deposit-JP Morgan Chase 48124JSY5	250,000.00
348		Certificate of Deposit-Citicorp Bank 17284CJG0	250,000.00
349		Certificate of Deposit-Compass Bank 20451PBG0	250,000.00
			<b>3,250,000.00</b>
<b>Medium Term Corporate Notes</b>			
257		Medium Term Corporate Note 59217EBW3	999,542.82
278		Goldman Sachs Mid Term Corp Note 38141EA74	1,009,942.80
280		Bank of America Mid Term Corp Note 06051GED	1,006,602.91
296		Barclays Bank Corporate Note 06738JVS0	1,000,000.00
306		General Electric Cap Corp 36962G5U4	1,000,000.00
322		AT&T Inc. 00206RBF8	1,003,515.06
331		JP Morgan 46625HJG6	1,002,594.32
346		General Electric Cap Corp 36962G6W9	1,007,597.01
			<b>8,029,794.92</b>
<b>Federal Agency Issues</b>			
301		Federal Home Loan Mtg Corp 3134G3NW6	1,000,000.00
323		Federal National Mortgage 3136G0PN5	2,000,000.00
324		Federal Home Loan Mtg Corp 313G3RK8	2,010,363.18
325		Federal National Mortgage Assn 3135G0MX8	2,000,000.00
326		Federal Farm Credit 3133EAA81	2,000,000.00
332		Federal Home Loan Bank 313381YG4	2,000,000.00
333		Federal National Mortgage Assoc 3136G1AP4	1,000,000.00
334		Freddie Mac 3134G33S7	1,000,000.00
335		Fannie Mae 3136GICF4	1,000,000.00
340		Federal Home Loan Bank 313381YN9	1,000,000.00
341		Federal Farm Credit Bank 3133EC7L2	999,084.30
342		Federal Farm Credit Bank 3133ECDX9	998,598.62
344		Federal Home Loan Mtg Corp 3134G43H9	2,000,000.00
345		Federal National Mortgage Assn 313G0WN9	2,000,000.00
347		Federal National Mortgage Assn 3136G1FL8	1,008,838.90
			<b>22,016,885.00</b>
<b>Total Pooled Cash and Investments</b>			<b>\$ 38,924,302.45</b>
Fair Value Increase (over cost)			(419,944.42)
<b>Outstanding items</b>			
		Outstanding Warrants/Wire Transfers	(48,599.69)
		Reconciliation Item	0.00
		Reconciliation Item	0.00
		Credit Card in Transit	210.25
<b>Total Outstanding Items</b>			<b>(48,389.44)</b>
<b>Reconciled Bank Balance</b>			<b>\$ 38,455,968.59</b>
<b>General Ledger Balance</b>			<b>\$ 38,455,968.59</b>
			0.00

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The City of Indian Wells  
 Portfolio Management  
 Portfolio Summary  
 September 30, 2013

City of Indian Wells  
 44-950 Eldorado Drive  
 Indian Wells CA 92210  
 (760)346-2489

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Bank Certificates of Deposit	3,000,000.00	2,996,356.25	3,000,000.00	7.71	1,475	1,153	1.216	1.233
Certificates of Deposit - S & L	250,000.00	250,000.00	250,000.00	0.64	1,096	131	1.250	1.267
Managed Pool Accounts - LAIF	4,952,815.29	4,952,815.29	4,952,815.29	12.72	1	1	0.253	0.257
Money Market Sweep/Checking Account	674,807.24	674,807.24	674,807.24	1.73	1	1	0.246	0.249
Medium Term Corporate Notes	8,000,000.00	8,127,210.00	8,029,794.92	20.63	1,683	983	2.583	2.618
Federal Agency Issues - Callables	22,000,000.00	21,586,990.00	22,016,885.00	56.56	1,979	1,675	1.172	1.188
<b>Investments</b>	<b>38,877,622.53</b>	<b>38,588,178.78</b>	<b>38,924,302.45</b>	<b>100.00%</b>	<b>1,588</b>	<b>1,240</b>	<b>1.334</b>	<b>1.352</b>
<b>Cash and Accrued Interest</b>								
Accrued Interest at Purchase		1,308.03	1,308.03					
Subtotal		1,308.03	1,308.03					
<b>Total Cash and Investments</b>	<b>38,877,622.53</b>	<b>38,589,486.81</b>	<b>38,925,610.48</b>		<b>1,588</b>	<b>1,240</b>	<b>1.334</b>	<b>1.352</b>

Total Earnings	September 30 Month Ending
Current Year	40,668.41
Average Daily Balance	39,377,367.65
Effective Rate of Return	1.26%

The above investments are consistent with the City's investment policy and allowable under current legislation of the State of California. Investments were purchased using safety, liquidity, and yield as criteria. In addition, cash flow from revenue and maturing investments will be sufficient to cover expenditures for the next six months. All securities are "Marked-to-Market" on a monthly basis.

*Kevin McCarthy* 11/27/2013  
 Kevin McCarthy, Finance Director

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Reporting period 09/01/2013-09/30/2013

Run Date: 10/22/2013 - 12:14

No fiscal year history available

Portfolio CITY  
 AP  
 PM (PRF\_PM1) 7.3.0  
 Report Ver. 7.3.3

The City of Indian Wells  
 Portfolio Management  
 Portfolio Details - Investments  
 September 30, 2013

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity	Maturity Date
<b>Bank Certificates of Deposit</b>												
SYS317	317	Ally Bank		05/23/2012	250,000.00	251,405.00	250,000.00	1.250		1.233	965	05/23/2016
02587DKR8	337	American Express Centurion		02/06/2013	250,000.00	251,432.50	250,000.00	1.700		1.677	1,401	08/02/2017
17284CJG0	348	Citicorp Bank		07/24/2013	250,000.00	248,840.00	250,000.00	1.400		1.381	1,392	07/24/2017
20451PBG0	349	Compass Bank		07/24/2013	250,000.00	249,477.50	250,000.00	1.700		1.677	1,757	07/24/2018
SYS319	319	Discover Bank		05/23/2012	250,000.00	251,430.00	250,000.00	1.050		1.036	602	05/26/2015
SYS316	316	GE Capital Retail Bank		05/25/2012	250,000.00	251,805.00	250,000.00	1.800		1.800	1,332	05/25/2017
SYS320	320	GE Capital Financial inc		05/25/2012	250,000.00	250,377.50	250,000.00	0.800		0.789	238	05/27/2014
38143A5L5	338	Goldman Sachs Bank		02/06/2013	250,000.00	247,622.50	250,000.00	1.050		1.036	1,224	02/06/2017
48124JSY5	339	JP Morgan Chase		02/27/2013	250,000.00	245,765.00	250,000.00	1.125		1.110	1,602	02/19/2018
7865802B5	330	SAFR National Bank		08/28/2012	250,000.00	251,170.00	250,000.00	0.800		0.789	696	08/28/2015
795450NW1	329	Sallie Mae		08/15/2012	250,000.00	251,037.50	250,000.00	1.250		1.233	1,049	08/15/2016
94986TLX3	336	Wells Fargo Bank		01/30/2013	250,000.00	245,993.75	250,000.00	0.850		0.838	1,583	01/31/2018
<b>Subtotal and Average</b>			<b>3,000,000.00</b>		<b>3,000,000.00</b>	<b>2,996,356.25</b>	<b>3,000,000.00</b>			<b>1.216</b>	<b>1,153</b>	
<b>Certificates of Deposit - S &amp; L</b>												
SYS281	281	Pacific Western Bank		02/09/2011	250,000.00	250,000.00	250,000.00	1.250		1.250	131	02/09/2014
<b>Subtotal and Average</b>			<b>250,000.00</b>		<b>250,000.00</b>	<b>250,000.00</b>	<b>250,000.00</b>			<b>1.250</b>	<b>131</b>	
<b>Managed Pool Accounts - LAIF</b>												
SYS21	21	LAIF - City			4,952,814.22	4,952,814.22	4,952,814.22	0.257		0.253	1	
SYS23	23	LAIF - Redevelopment			1.07	1.07	1.07	0.257		0.253	1	
<b>Subtotal and Average</b>			<b>5,500,481.96</b>		<b>4,952,815.29</b>	<b>4,952,815.29</b>	<b>4,952,815.29</b>			<b>0.253</b>	<b>1</b>	
<b>Money Market Sweep/Checking Account</b>												
SYS1	1	Pacific Western Bank			660,248.17	660,248.17	660,248.17	0.250		0.247	1	
SYS2	2	Pacific Western - Acct Payable		07/01/2012	0.00	0.00	0.00			0.000	1	
SYS3	3	Pacific Western-Payroll		07/01/2012	0.00	0.00	0.00			0.000	1	
SYS4	4	Union Bank-Checking			13,159.07	13,159.07	13,159.07	0.250		0.247	1	
SYS19	19	Petty Cash		07/01/2012	1,400.00	1,400.00	1,400.00			0.000	1	
<b>Subtotal and Average</b>			<b>579,536.84</b>		<b>674,807.24</b>	<b>674,807.24</b>	<b>674,807.24</b>			<b>0.246</b>	<b>1</b>	
<b>Medium Term Corporate Notes</b>												
00206RBF8	322	AT&T INC		06/21/2012	1,000,000.00	996,830.00	1,003,515.06	1.600		1.479	1,339	06/01/2017
06738JVS0	296	Barclays Bank PLC		10/27/2011	1,000,000.00	1,039,130.00	1,000,000.00	3.500	AA	3.452	1,122	10/27/2016
06051GED	280	Bank of America		02/02/2011	1,000,000.00	1,045,450.00	1,006,602.91	3.700		3.254	700	09/01/2015

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**The City of Indian Wells  
Portfolio Management  
Portfolio Details - Investments  
September 30, 2013**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity	Maturity Date
<b>Medium Term Corporate Notes</b>												
36962G5U4	306	General Elec. Cap Crp		04/18/2012	1,000,000.00	1,000,010.00	1,000,000.00	1.200		1.200	559	04/13/2015
36962G6W9	346	General Elec. Cap Crp		05/01/2013	1,000,000.00	984,390.00	1,007,597.01	1.625		1.430	1,644	04/02/2018
38141EA74	278	Goldman Sachs Group Inc		02/02/2011	1,000,000.00	1,043,300.00	1,009,942.80	3.700	AA	3.072	669	08/01/2015
46625HJG6	331	J P Morgan		01/28/2013	1,000,000.00	986,070.00	1,002,594.32	1.800		1.713	1,577	01/25/2018
59217EBW3	257	MetLife		06/29/2009	1,000,000.00	1,032,030.00	999,542.82	5.125		5.068	252	06/10/2014
<b>Subtotal and Average</b>			<b>8,030,256.28</b>		<b>8,000,000.00</b>	<b>8,127,210.00</b>	<b>8,029,794.92</b>			<b>2.583</b>	<b>983</b>	
<b>Federal Agency Issues - Callables</b>												
3133EAA8*	326	Fed. Farm Credit Bank		07/30/2012	2,000,000.00	1,984,160.00	2,000,000.00	0.780		0.769	1,217	01/30/2017
3133EC7L2	341	Fed. Farm Credit Bank		03/22/2013	1,000,000.00	967,070.00	999,084.30	1.290		1.289	2,082	06/14/2019
3133ECDX9	342	Fed. Farm Credit Bank		03/25/2013	1,000,000.00	932,660.00	998,598.62	1.840		1.835	2,683	02/04/2021
313381YG4	332	Fed. Home Loan Bank		02/20/2013	2,000,000.00	1,962,880.00	2,000,000.00	1.000		0.986	1,603	02/20/2018
313381YN9	340	Fed. Home Loan Bank		03/21/2013	1,000,000.00	974,470.00	1,000,000.00	0.750		1.856	2,509	08/14/2020
3134G3NW6	301	Fed. Home Loan Mtg Corp		02/27/2012	1,000,000.00	1,001,760.00	1,000,000.00	1.050	AAA	1.036	1,245	02/27/2017
3134G3RK8	324	Fed. Home Loan Mtg Corp		06/29/2012	2,000,000.00	2,006,460.00	2,010,363.18	1.000		0.774	895	03/14/2016
3134G33S7	334	Fed. Home Loan Mtg Corp		01/24/2013	1,000,000.00	973,590.00	1,000,000.00	1.000		0.986	1,749	07/16/2018
3134G43H9	344	Fed. Home Loan Mtg Corp		04/30/2013	2,000,000.00	1,952,860.00	2,000,000.00	1.060		1.045	1,672	04/30/2018
3136G0PN5	323	Fed. Nat'l Mortgage Assoc		06/27/2012	2,000,000.00	1,964,920.00	2,000,000.00	1.000		2.219	2,278	12/27/2019
3135G0MX8	325	Fed. Nat'l Mortgage Assoc		07/26/2012	2,000,000.00	1,997,900.00	2,000,000.00	0.750		0.740	1,029	07/26/2016
3136G1AP4	333	Fed. Nat'l Mortgage Assoc		01/24/2013	1,000,000.00	986,610.00	1,000,000.00	0.700		1.094	1,574	01/22/2018
3136G1CF4	335	Fed. Nat'l Mortgage Assoc		01/30/2013	1,000,000.00	972,880.00	1,000,000.00	1.000	AAA	0.986	1,763	07/30/2018
3135G0WN9	345	Fed. Nat'l Mortgage Assoc		04/30/2013	2,000,000.00	1,948,480.00	2,000,000.00	1.000		0.986	1,672	04/30/2018
3136G1FL8	347	Fed. Nat'l Mortgage Assoc		04/26/2013	1,000,000.00	960,290.00	1,008,838.90	1.820		1.660	2,522	08/27/2020
<b>Subtotal and Average</b>			<b>22,017,092.58</b>		<b>22,000,000.00</b>	<b>21,586,990.00</b>	<b>22,016,885.00</b>			<b>1.172</b>	<b>1,675</b>	
<b>Total and Average</b>			<b>39,377,367.65</b>		<b>38,877,622.53</b>	<b>38,588,178.78</b>	<b>38,924,302.45</b>			<b>1.334</b>	<b>1,240</b>	

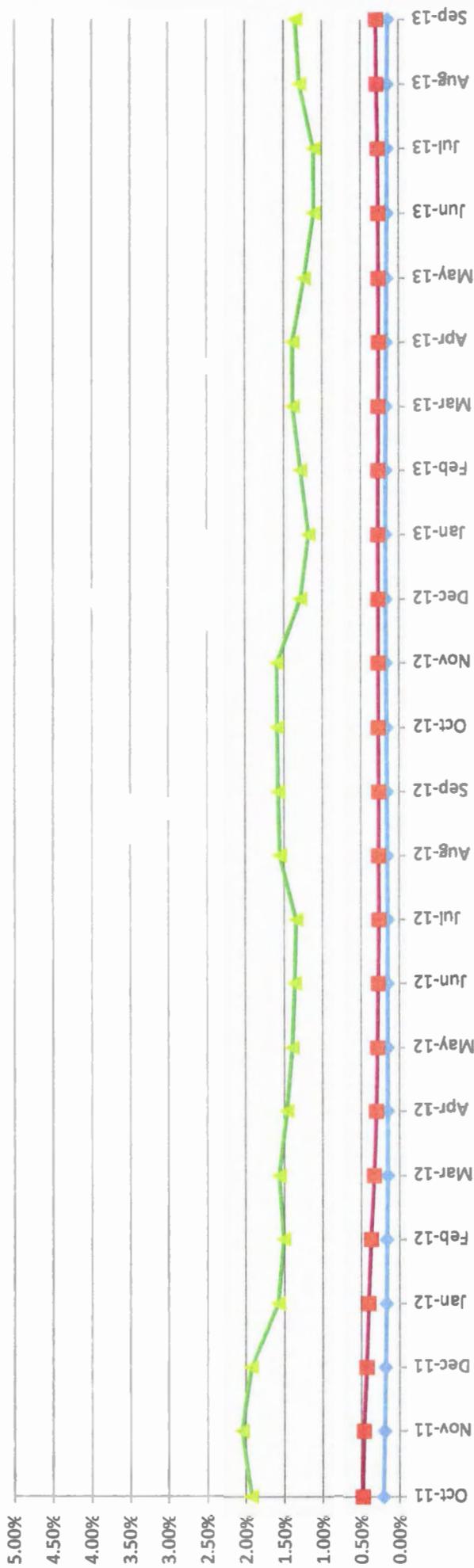
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The City of Indian Wells  
 Portfolio Management  
 Portfolio Details - Cash  
 September 30, 2013

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity
		Average Balance	0.00	Accrued Interest at Purchase		1,308.03	1,308.03				0
				Subtotal		1,308.03	1,308.03				
		Total Cash and Investments	39,377,367.65		38,877,622.53	38,589,486.81	38,925,610.48			1.334	1,240

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City of Indian Wells  
Yield Trend  
9/30/2013

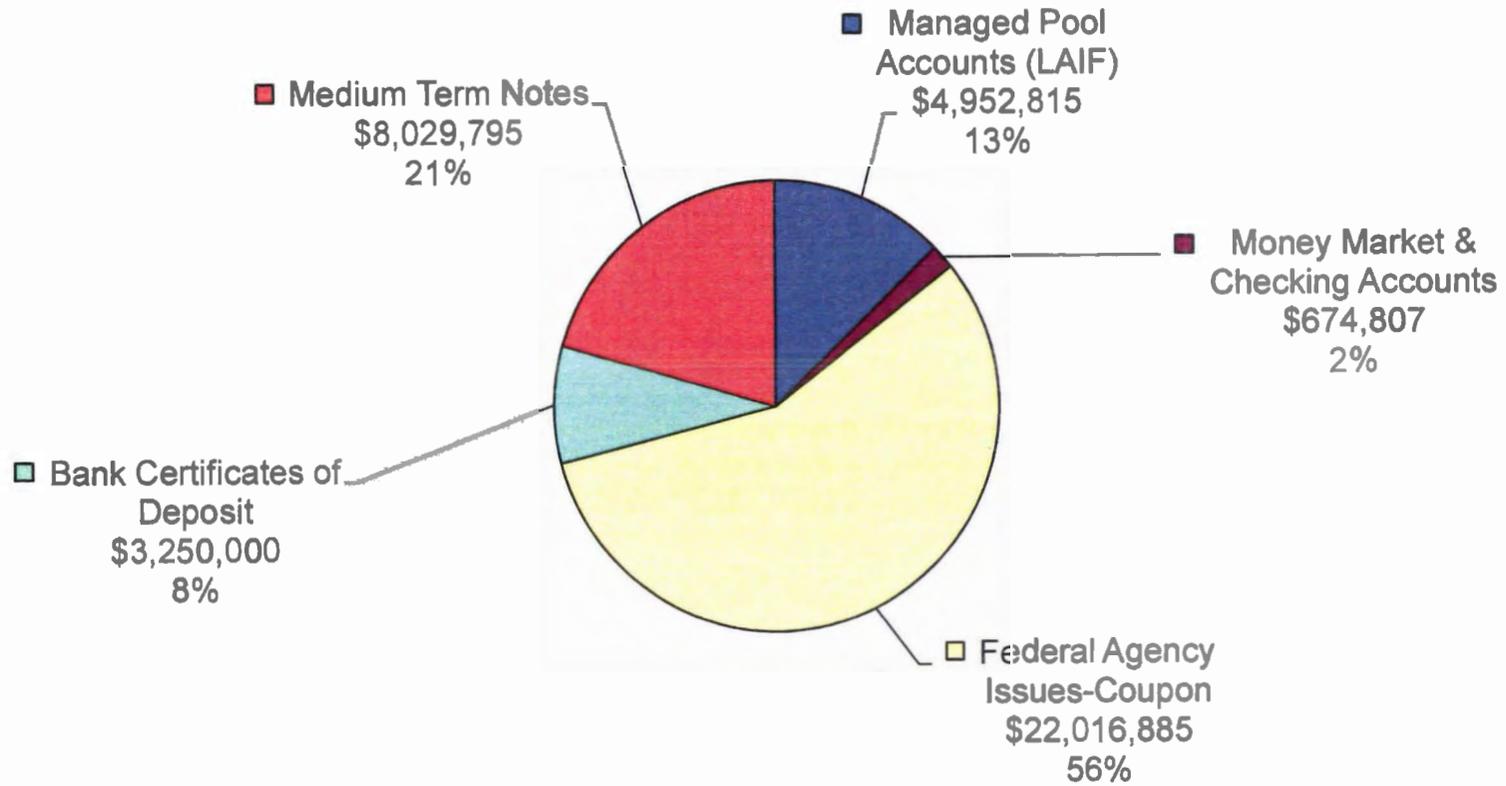


365 day Portfolio Yield

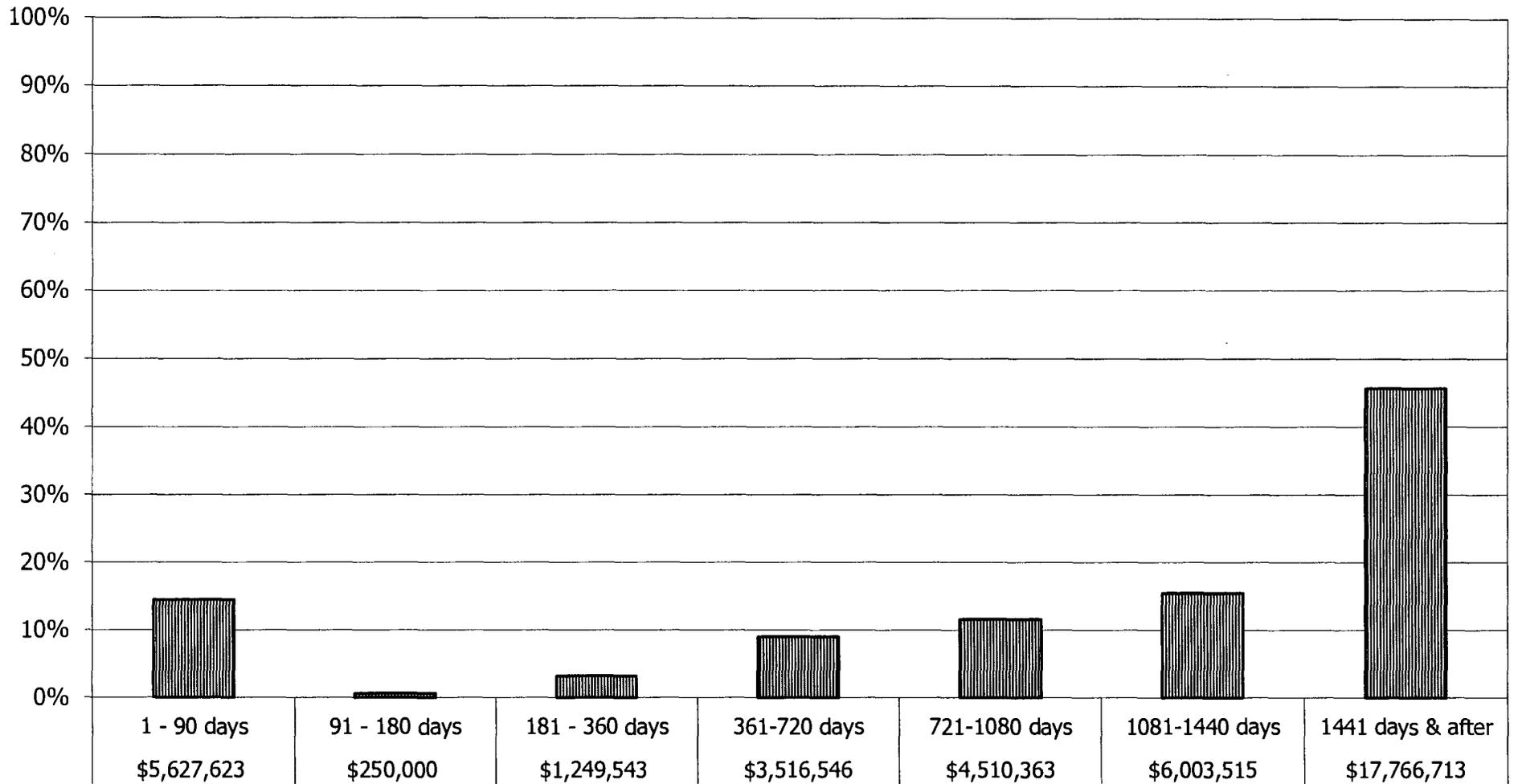
Average 2 Year CMT

Average 1 Year CMT

## City of Indian Wells Sector Diversification as of 9/30/2013



**City of Indian Wells**  
**Aging of Maturing Investments at 9/30/2013**  
**\$38,924,302**





**Housing Series 2003 AT Bonds  
Portfolio Management  
Portfolio Summary  
September 30, 2013**

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells CA 92210  
(760)346-2489

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	6.98	6.98	6.98	100.00	1	1	0.346	0.351
<b>Investments</b>	<b>6.98</b>	<b>6.98</b>	<b>6.98</b>	<b>100.00%</b>	<b>1</b>	<b>1</b>	<b>0.346</b>	<b>0.351</b>

Total Earnings	September 30 Month Ending
Current Year	988.94
Average Daily Balance	2,934,655.72
Effective Rate of Return	0.41%

*Kevin McCarthy* 11/27/2013  
 Kevin McCarthy, Agency Treasurer

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Reporting period 09/01/2013-09/30/2013

Run Date: 11/26/2013 - 12:40

No fiscal year history available

Portfolio 03AT  
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PM (PRF\_PM1) 7.3.0  
Report Ver. 7.3.3

**Housing Series 2003 AT Bonds  
Portfolio Management  
Portfolio Details - Investments  
September 30, 2013**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity	Maturity Date
<b>Money Market Sweep/Checking Account</b>												
SYS36	36	2003 AT Bonds Housing Surplus			0.00	0.00	0.00	2.410		2.377	1	
SYS12	12	2003 AT Bonds Interest Reserve			2.26	2.26	2.26	0.410		0.404	1	
SYS13	13	2003 AT Bonds Principal Reserv			3.72	3.72	3.72	0.410		0.404	1	
SYS11	11	2003 AT Bonds Reserve		07/01/2012	1.00	1.00	1.00			0.000	1	
SYS1	1	Fidelity Institutional Money M			0.00	0.00	0.00	2.640		2.604	1	
SYS10	10	UBC Cost Of Issuance Escrow		07/01/2012	0.00	0.00	0.00			0.000	1	
<b>Subtotal and Average</b>			<b>2,934,655.72</b>		<b>6.98</b>	<b>6.98</b>	<b>6.98</b>			<b>0.346</b>	<b>1</b>	
<b>Total and Average</b>			<b>2,934,655.72</b>		<b>6.98</b>	<b>6.98</b>	<b>6.98</b>			<b>0.346</b>	<b>1</b>	

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28



**RDA Series 2003 A Bonds  
Portfolio Management  
Portfolio Summary  
September 30, 2013**

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells CA 92210  
(760)346-2489

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	4.54	4.54	4.54	100.00	1	1	0.320	0.324
<b>Investments</b>	<b>4.54</b>	<b>4.54</b>	<b>4.54</b>	<b>100.00%</b>	<b>1</b>	<b>1</b>	<b>0.320</b>	<b>0.324</b>

Total Earnings	September 30 Month Ending
Current Year	270.37
Average Daily Balance	787,715.76
Effective Rate of Return	0.42%

*Kevin McCarthy* 11/27/2013

Kevin McCarthy, Agency Treasurer

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Reporting period 09/01/2013-09/30/2013

Run Date: 11/26/2013 - 12:37

No fiscal year history available

Portfolio 03A  
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PM (PRF\_PM1) 7.3.0  
Report Ver. 7.3.3

**RDA Series 2003 A Bonds  
Portfolio Management  
Portfolio Details - Investments  
September 30, 2013**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
<b>Money Market Sweep/Checking Account</b>												
SYS12	12	2003 A Bonds Reserve			1.00	1.00	1.00	0.001		0.001	1	
SYS14	14	2003 A Bonds Principal			2.04	2.04	2.04	0.420		0.420	1	
SYS13	13	2003 A Bonds Interest			1.50	1.50	1.50	0.410		0.410	1	
SYS1	1	Blackrock Provident T-Fund			0.00	0.00	0.00	0.001		0.001	1	
SYS11	11	UBC Cost Of Issuance Escrow		07/01/2012	0.00	0.00	0.00			0.000	1	
<b>Subtotal and Average</b>			<b>787,715.76</b>		<b>4.54</b>	<b>4.54</b>	<b>4.54</b>			<b>0.324</b>	<b>1</b>	
<b>Total and Average</b>			<b>787,715.76</b>		<b>4.54</b>	<b>4.54</b>	<b>4.54</b>			<b>0.324</b>	<b>1</b>	

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**2006 A Bonds  
Portfolio Management  
Portfolio Summary  
September 30, 2013**

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells CA 92210  
(760)346-2489

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	5.66	5.66	5.66	100.00	1	1	0.333	0.338
<b>Investments</b>	<b>5.66</b>	<b>5.66</b>	<b>5.66</b>	<b>100.00%</b>	<b>1</b>	<b>1</b>	<b>0.333</b>	<b>0.338</b>

Total Earnings	September 30 Month Ending
Current Year	723.85
Average Daily Balance	2,148,017.03
Effective Rate of Return	0.41%

*Kevin McCarthy* 11/27/2013  
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 Kevin McCarthy, Agency Treasurer

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Reporting period 09/01/2013-09/30/2013

Run Date: 11/26/2013 - 12:46

No fiscal year history available

Portfolio 06A  
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PM (PRF\_PM1) 7.3.0  
Report Ver. 7.3.3

**2006 A Bonds  
Portfolio Management  
Portfolio Details - Investments  
September 30, 2013**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
<b>Money Market Sweep/Checking Account</b>												
SYS13	13	2006A Good Faith Deposit			0.00	0.00	0.00	5.080		5.080	1	
SYS15	15	2006 A Bonds Reserve			1.00	1.00	1.00			0.000	1	
SYS14	14	2006 A Bonds Interest			3.28	3.28	3.28	0.410		0.410	1	
SYS12	12	UBC Cost Of Issuance Escrow			0.00	0.00	0.00	5.020		5.020	1	
SYS10	10	Fidelity Institutional Money M			0.00	0.00	0.00	5.360		5.360	1	
SYS17	17	Principal Account			1.38	1.38	1.38	0.410		0.410	1	
		<b>Subtotal and Average</b>	<b>2,148,017.03</b>		<b>5.66</b>	<b>5.66</b>	<b>5.66</b>			<b>0.338</b>	<b>1</b>	
		<b>Total and Average</b>	<b>2,148,017.03</b>		<b>5.66</b>	<b>5.66</b>	<b>5.66</b>			<b>0.338</b>	<b>1</b>	

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**RDA Series 2010 A Bonds  
Portfolio Management  
Portfolio Summary  
September 30, 2013**

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells CA 92210  
(760)346-2489

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	780,665.22	780,665.22	780,665.22	100.00	1	1	0.000	0.000
<b>Investments</b>	<b>780,665.22</b>	<b>780,665.22</b>	<b>780,665.22</b>	<b>100.00%</b>	<b>1</b>	<b>1</b>	<b>0.000</b>	<b>0.000</b>

Total Earnings	September 30 Month Ending
Current Year	102.27
Average Daily Balance	1,295,768.75
Effective Rate of Return	0.10%

*Kevin McCarthy* 11/27/2013  
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 Kevin McCarthy, Agency Treasurer

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Reporting period 09/01/2013-09/30/2013

Run Date: 11/26/2013 - 12:48

No fiscal year history available

Portfolio 010A  
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PM (PRF\_PM1) 7.3.0  
Report Ver. 7.3.3

**RDA Series 2010 A Bonds  
Portfolio Management  
Portfolio Details - Investments  
September 30, 2013**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
<b>Money Market Sweep/Checking Account</b>												
SYS1	1	2010 A Bonds Reserve		07/01/2012	780,664.32	780,664.32	780,664.32			0.000	1	
SYS14	13	2010 A Bonds Principal		07/01/2012	0.48	0.48	0.48			0.000	1	
SYS4	4	2010 A Bonds Interest			0.42	0.42	0.42	0.530		0.530	1	
SYS7	7	Local Agency Investment Fund			0.00	0.00	0.00	0.530		0.530	1	
SYS2	2	Blackrock Provident T-Fund		07/01/2012	0.00	0.00	0.00			0.000	1	
SYS3	3	UBC Cost Of Issuance Escrow		07/01/2012	0.00	0.00	0.00			0.000	1	
<b>Subtotal and Average</b>			<b>1,295,768.75</b>		<b>780,665.22</b>	<b>780,665.22</b>	<b>780,665.22</b>			<b>0.000</b>	<b>1</b>	
<b>Total and Average</b>			<b>1,295,768.75</b>		<b>780,665.22</b>	<b>780,665.22</b>	<b>780,665.22</b>			<b>0.000</b>	<b>1</b>	

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**City of Indian Wells  
Portfolio Management  
Portfolio Summary  
September 30, 2013**

City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells CA 92210  
(760)346-2489

<b>Investments</b>	<b>Par Value</b>	<b>Market Value</b>	<b>Book Value</b>	<b>% of Portfolio</b>	<b>Term</b>	<b>Days to Maturity</b>	<b>YTM 360 Equiv.</b>	<b>YTM 365 Equiv.</b>
Managed Trustee Accounts	3.62	3.62	3.62	0.00	1	1	1.689	1.712
Checking Accounts with Fiscal Agent	1,766,914.31	1,766,914.31	1,766,914.31	100.00	1	1	0.816	0.828
<b>Investments</b>	<b>1,766,917.93</b>	<b>1,766,917.93</b>	<b>1,766,917.93</b>	<b>100.00%</b>	<b>1</b>	<b>1</b>	<b>0.816</b>	<b>0.828</b>

<b>Total Earnings</b>	<b>September 30 Month Ending</b>
Current Year	1,493.22
Average Daily Balance	2,645,502.27
Effective Rate of Return	0.69%

  
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Kevin McCarthy, Finance Director

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Reporting period 09/01/2013-09/30/2013

Run Date: C1/29/2014 - 11:31

No fiscal year history available

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Report Ver. 7.3.3

**City of Indian Wells  
Portfolio Management  
Portfolio Details - Investments  
September 30, 2013**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity	Maturity Date
<b>Managed Trustee Accounts</b>												
SYS1	1	Union Bank of California			0.00	0.00	0.00	5.110		5.040	1	
SYS11	11	Union Bank of California			1.00	1.00	1.00	5.110		5.040	1	
SYS12	12	Union Bank of California			1.32	1.32	1.32	0.420		0.414	1	
SYS13	13	Union Bank of California			1.30	1.30	1.30	0.410		0.404	1	
SYS14	14	Union Bank of California		07/01/2012	0.00	0.00	0.00	5.110		5.040	1	
SYS15	15	Union Bank of California		07/01/2012	0.00	0.00	0.00	5.110		5.040	1	
SYS16	16	Union Bank of California		07/01/2012	0.00	0.00	0.00	5.110		5.040	1	
SYS2	2	Union Bank of California			0.00	0.00	0.00	5.110		5.040	1	
SYS3	3	Union Bank of California			0.00	0.00	0.00	4.950		4.882	1	
SYS4	4	Union Bank of California			0.00	0.00	0.00	4.950		4.882	1	
SYS5	5	Union Bank of California			0.00	0.00	0.00	4.950		4.882	1	
SYS8	8	Union Bank of California			0.00	0.00	0.00	4.950		4.882	1	
<b>Subtotal and Average</b>			<b>979,941.66</b>		<b>3.62</b>	<b>3.62</b>	<b>3.62</b>			<b>1.689</b>	<b>1</b>	
<b>Checking Accounts with Fiscal Agent</b>												
SYS6	6	The Golf Resort at Indian Well		07/01/2012	304,383.28	304,383.28	304,383.28			0.000	1	
SYS7	7	Indian Wells Villas			766,004.04	766,004.04	766,004.04	1.000		0.986	1	
SYS10	10	Mountain View Villas			696,526.99	696,526.99	696,526.99	1.000		0.986	1	
<b>Subtotal and Average</b>			<b>1,665,560.61</b>		<b>1,766,914.31</b>	<b>1,766,914.31</b>	<b>1,766,914.31</b>			<b>0.816</b>	<b>1</b>	
<b>Total and Average</b>			<b>2,645,502.27</b>		<b>1,766,917.93</b>	<b>1,766,917.93</b>	<b>1,766,917.93</b>			<b>0.816</b>	<b>1</b>	

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**FIRE ACCESS MAINTENANCE DISTRICT (FAMD)  
02/06/2014 MEETING WARRANT LIST**

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44632	2/6/2014		UNIVERSAL PROTECTION SERVICE		
		1012318	FAMD SECURITY SERVICES FOR DEC 20-DEC 26, 2013	16,099.25	
	2/6/2014		UNIVERSAL PROTECTION SERVICE		
		1002559	FAMD SECURITY SERVICES FOR DEC 6-DEC 12, 2013	16,035.78	
		999233	FAMD SECURITY SERVICES FOR NOV 29-DEC 5, 2013	15,413.19	
		1006441	FAMD SECURITY SERVICES FOR DEC 13-DEC 19, 2013	14,826.96	<b>62,375.18</b>
44624	2/6/2014		DESERT RESORT MANAGEMENT INC.		
		DRM012163	FAMD MANAGEMENT SERVICES FOR SEPT, 2013	5,768.00	
		DRM013125	FAMD MANAGEMENT SERVICES FOR JAN, 2014	5,768.00	<b>11,536.00</b>
44626	2/6/2014		M & M SWEEPING, INC.		
		35210	FAMD MONTHLY STREET SWEEPING & ADDITIONAL-MANITOU, IROQUOIS & CLUB FOR DEC, 2013	5,380.00	
		35157	FAMD ADDITIONAL STREET & CURB DRAIN SWEEPING SVC ON SANDPIPER & IROQUOIS	2,050.00	<b>7,430.00</b>
44625	2/6/2014		F & F CONSTRUCTION INC		
		010614	FAMD CLUB GATE EXIT OVERHANG REPAIR SERVICE	1,800.00	
		292	FAMD INSTALLATION OF NEW SIGN HOOKS AT CLUB DRIVE GUARHOUSE	85.00	<b>1,885.00</b>
44634	2/6/2014		WILLDAN FINANCIAL SERVICES		
		010-22894	FAMD LEVY SERVICES FOR JAN-MAR 2014	1,101.10	<b>1,101.10</b>
44633	2/6/2014		WALLACE & ASSOCIATES, INC.		
		2013-06FAMD-R	FAMD ENGINEERING ASSESSMENT, FIELD EVALUATIONS, REPORTING & MGMT SVC FOR NOV,	837.50	<b>837.50</b>
44619	2/6/2014		APPLICATIONS BY DESIGN, INC.		
		22049	FAMD ACCESS CONTROL SYSTEM HOSTING FOR JAN, 2014	625.00	<b>625.00</b>
44622	2/6/2014		COASTAL CLEAR POOLS		
		3702	FAMD CLUB/MANITOU FOUNTAINS LEAK DETECTION SERVICE	450.00	
		3849	FAMD CLUB/MANITOU FOUNTAINS MAINTENANCE FOR DEC, 2013	150.00	<b>600.00</b>
44620	2/6/2014		ASSOCIA ONCALL CALFORNIA INC		
		OCA005959	FAMD MANITOU & SIOUX CURB PAINTING SERVICE ON NOV 25, 2013	340.00	<b>340.00</b>
44631	2/6/2014		STAPLES		
		601110005223615	LAMINATING SHEETS, TOILET SEAT COVERS, BUS CARDS, INK, PLUNGER, AND CLEANER	334.95	<b>334.95</b>

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**FIRE ACCESS MAINTENANCE DISTRICT (FAMD)  
02/06/2014 MEETING WARRANT LIST**

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44629	2/6/2014		ROTA, RANDI		
		9245781092	FAMD MANITOU GUARDHOUSE PRINTER BLACK TONER REPLACEMENT CARTRIDGE	209.00	209.00
44623	2/6/2014		DESERT PROPERTIES LIGHT MAINT.		
		11611	FAMD GATES LIGHT MONTHLY MAINTENANCE FOR DEC, 2013	95.00	
		11446	FAMD GATE LIGHT TIMER RESET SERVICE	55.00	150.00
44630	2/6/2014		SPARKLETTS DRINKING WATER		
		8380597010114	FAMD CLUB/MANITOU GATEHOUSE FILTRATION SYSTEM RENTALS FOR JAN, 2014	124.48	124.48
44627	2/6/2014		PETE ANDERSON PLUMBING, INC.		
		5775	FAMD CLUB DRIVE GUARD HOUSE WATER FILTRATION SUPPLY LINE LEAK REPAIR SERVICE	90.00	90.00
44628	2/6/2014		POWERFUL PEST		
		100425	FAMD CLUB/MANITOU GUARDHOUSE PEST CONTROL FOR JAN, 2014	61.80	61.80
44621	2/6/2014		COACHELLA VALLEY WATER DIST.		
		152597-419098	FAMD 45-301 CLUB DR UTILITIES FOR DEC, 2013	59.18	59.18

16 checks in this report

**TOTAL FAMD WARRANTS 44619-44634 : 87,759.19**

CC/HA ACTION \_\_\_\_\_ MTG. DATE: 2-6-12  
 APPROVED  DENIED  REC/FILE  CONT. \_\_\_\_\_  
 OTHER \_\_\_\_\_  
 VOTE: YES 5 NO 0 ABSTAIN \_\_\_\_\_

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44542	2/6/2014		BURRTEC WASTE & RECYCLING		
		2013/14 #1	SOLID WASTE FEES PASS THROUGH FOR FISCAL YEAR 2013/14	492,639.31	
	2/6/2014		BURRTEC WASTE & RECYCLING		
		44-BS 405166	ONSITE STORAGE RENTAL FOR CHRISTMAS TREE DECORATIONS FOR JAN, 2014	80.00	<b>492,719.31</b>
44530	1/24/2014		INDIAN WELLS GOLF RESORT		
		DRAW #6	IWGR PAVILION BANQUET EVENT CENTER CONSTRUCTION LOAN DRAW #6	380,176.24	<b>380,176.24</b>
44615	2/6/2014		VINTAGE ASSOCIATES		
		SI-138917	(19) CITYWIDE GENERAL FUND & LLMDs LANDSCAPE MAINT FOR JAN, 2014	43,855.13	
		SI-137998	HWY 111 MEDIANS LANDSCAPE SERVICE FOR OCT TO NOV, 2013	13,620.00	
		SI-138001	LANDSCAPE INSTALLATION SERVICES FOR N. HWY 111 BETWEEN IW LANE & MILES AVE	8,116.00	<b>65,591.13</b>
44525	1/22/2014		CALPERS RETIREMENT SYSTEM		
		0844	OPEB FUNDING FOR JAN 17, 2014	31,976.20	<b>31,976.20</b>
44559	2/6/2014		HEPTAGON SEVEN CONSULTING, INC.		
		201312006	IW VILLAGE RULE 20B UTILITY UNDERGROUNDING MGMT SVCS FOR NOV 8 TO DEC 27, 2013	21,802.50	<b>21,802.50</b>
44540	2/6/2014		BEST, BEST & KRIEGER, L.L.P.		
		717387	LA WELLIN PROPERTY CODE ENFORCEMENT LEGAL-ANALYSIS, DRAFT MEMO FOR DEC, 2013	817.50	
		717391	45-995 VISTA DORADO CODE ENFORCEMENT LEGAL SVCS-PREPARE REPLY, HEARING FOR DEC, 13	7,665.50	
		717385	PERSONNEL/LABOR LEGAL SVCS-EMAILS & CONFERENCES FOR DEC, 2013	2,575.10	
		717390	75497 PALM SHADOW CODE ENFORCEMENT LEGAL SVC-ATTEND HEARINGS, EMAILS FOR DEC, 2013	1,551.80	
		717392	46230 PAPAGO CIR CODE ENFORCEMENT LEGAL SVC-EMAIL, ATTEND HEARING FOR DEC, 2013	397.34	
		717388	CODE ENFORCEMENT LEGAL SVCS-REVISE STATUS SHEET & EMAIL FOR DEC, 2013	70.44	<b>13,077.68</b>
44600	2/6/2014		SOUTHERN CALIFORNIA EDISON CO.		
		2-10-345-9178	ELDORADO/HWY 111/COOK/FRED WARING/CIELITO/OSAGE/PALMERAS UTILITIES FOR JAN, 2014	4,537.00	
		2-01-570-2186	44-900 ELDORADO DR FIRE STATION UTILITIES FOR JAN, 2014	734.18	
		2-32-228-7590	45-200 CLUB DR & CLUB DR STE B. UTILITIES FOR JAN, 2014	264.98	
		2-26-379-6526	77-601 1/2 & 77-801 1/2 MILES PED UTILITIES FOR JAN, 2014	220.56	
		2-10-366-7440	44-210 1/2 COOK & 76-105 1/2 FRED WARING UTILITIES FOR DEC, 2013	149.67	

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
		2-28-811-9811	75-595 1/2 FAIRWAY DR UTILITIES FOR JAN, 2014	148.63	
		2-30-405-2939	75-254 1/2 HWY 111 UTILITIES FOR JAN, 2014	140.46	
		2-02-275-6597	76-884 1/2 INCA DR UTILITIES FOR JAN, 2014	117.66	
		2-26-446-8521	77-440 1/2 MILES AVE TC1 UTILITIES FOR JAN, 2014	98.82	
		2-28-811-8029	78-496 HWY 111 TC1 UTILITIES FOR DEC, 2013	98.57	
		2-28-811-8524	79 DESERT HORIZON/HWY 111 SIGNAL UTILITIES FOR JAN, 2014	94.96	
		2-04-013-0916	45-277 CLUB DR UTILITIES FOR JAN, 2014	84.34	
		2-10-366-7580	44-950 ELDORADO, 45-826 IW LN, ELDORADO/FW & PORTOLA/VINTAGE UTILITIES FOR DEC	75.59	
		2-33-975-8682	45-200 CLUB DR UNIT B2 UTILITIES FOR JAN, 2014	71.91	
		2-19-255-7163	75980 1/2 HWY 111 UTILITIES FOR JAN, 2014	67.07	
		2-26-702-6078	45-002 1/2 MILES AVE PED UTILITIES FOR JAN, 2014	66.85	
		2-30-405-3051	75-256 1/2 HWY 111 UTILITIES FOR JAN, 2014	65.25	
		2-31-473-5101	45-280 1/2 COOK ST LOT UTILITIES FOR JAN, 2014	57.85	
		2-28-811-8466	79 HWY 111-ELDORADO SIGNAL UTILITIES FOR JAN, 2014	52.76	
		2-28-811-8276	79 HIGHWAY 111 MILES LOT UTILITIES FOR JAN, 2014	52.55	
		2-28-811-8425	INDIAN WELLS/HWY 111 TC1 UTILITIES FOR JAN, 2014	47.17	
		2-28-811-8367	79 HIGHWAY 111 CLUB LOT UTILITIES FOR JAN, 2014	44.31	
		2-19-200-4638	74812 1/2 HWY 111 UTILITIES FOR JAN, 2014	34.79	
		2-35-253-2683	45-324 1/2 INDIAN WELLS LN UTILITIES FOR JAN, 2014	34.74	
		2-32-400-4498	45-300 CLUB DR UTILITIES FOR JAN, 2014	25.92	
		2-25-127-1755	IW VILLAGE HOA #1 LIGHTING FOR DEC, 2013	21.69	
		2-25-185-7439	IW VILLAGE HOA #2 LIGHTING FOR DEC, 2013	21.69	
		2-25-128-1648	IW VILLAGE HOA #3 LIGHTING FOR DEC, 2013	21.69	
		2-25-185-7942	IW VILLAGE HOA #4 LIGHTING FOR DEC, 2013	21.69	
		2-25-410-4201	IW VILLAGE HOA #5 LIGHTING FOR DEC, 2013	21.69	
		2-01-570-2202	77-250 SANDPIPER DR LOT UTILITIES FOR JAN, 2014	19.12	
		2-35-530-3157	FAIRWAY DR & WILLIAMS RD STREET LIGHT UTILITIES FOR DEC, 2013	10.87	7,525.03
44595	2/6/2014		RBF CONSULTING		
		867873	HWY 111 PHASE 3 CONSTRUCTION SURVEYING & STAKING FOR SEPT 30-DEC 31, 2013	6,750.00	6,750.00

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44532	2/6/2014		AEGIS ITS, INCORPORATED		
		6711	TRAFFIC SIGNALS MAINT/REPAIRS FOR HWY 111/COOK, RANCHO PALMERAS VARIOUS LOCATION	6,685.77	<b>6,685.77</b>
44552	2/6/2014		ENDRES, MANFRED		
		101	COST ALLOCATION PLAN PREPARATION SERVICES	6,625.00	<b>6,625.00</b>
44519	1/14/2014		EMERSON, JOHN C.		
		1324901-2 0009	9/13 LANDSCAPE DEPOSIT REFUND FOR 75372 PALM SHADOW DRIVE	5,000.00	<b>5,000.00</b>
44589	2/6/2014		PROPER SOLUTIONS		
		557	RECEPTIONIST & COMMUNITY DEVELOPMENT TEMP SVCS FOR JAN 6-10, 2014	1,108.80	
		570	RECEPTIONIST & COMMUNITY DEVELOPMENT TEMP SVCS FOR JAN 13-17, 2014	1,108.80	
		505	RECEPTIONIST TEMP SERVICES FOR DEC 16-20, 2013	792.00	
		538	RECEPTIONIST TEMP SERVICES FOR DEC 20, 2013-JAN 3, 2014	554.40	
		523	RECEPTIONIST TEMP SERVICES FOR DEC 23-27, 2013	554.40	
		439	RECEPTIONIST TEMP SERVICES FOR NOV 25-27, 2013	475.20	<b>4,593.60</b>
44605	2/6/2014		SYMPRO		
		07861	1-YR INVESTMENT SOFTWARE MAINTENANCE & SUPPLIES FOR MAR 15, 2014-MAR 14, 2015	4,096.00	<b>4,096.00</b>
44567	2/6/2014		JAS PACIFIC		
		B1 11497	BUILDING INSPECTION, PLAN REVIEW, PERMIT ISSUANCE & CODE ENFORCEMENT SVC FOR DEC	3,944.00	<b>3,944.00</b>
44522	1/16/2014		COACHELLA VALLEY ASSOC OF GOVT		
		DEC13	TUMF FEES COLLECTED FOR DEC, 2013	3,674.88	<b>3,674.88</b>
44617	2/6/2014		WILLDAN FINANCIAL SERVICES		
		010-22894	LLD LEVY SERVICES FOR FOR JAN-MAR 2014	3,246.55	<b>3,246.55</b>
44547	2/6/2014		COACHELLA VALLEY WATER DIST.		
		281263-740536	44-950 ELDORADO DRIVE UTILITIES FOR JAN, 2014	10.00	
		331197-849962	LLMD S. HWY 111 @ MANITOU UTILITIES DEC, 2013	796.80	
		155761-422706	INCA DRIVE UTILITIES FOR JAN, 2014	444.04	
		156361-423526	HWY 111 LANDSCAPE UTILITIES FOR JAN, 2014	303.50	

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**CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST**

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
		153215-419808	MILES AVE/WARNER TRL UTILITIES FOR JAN, 2014	261.34	
		313547-845300	MILES AVE EAST OF WARNER TRL UTILITIES FOR JAN, 2014	225.50	
		281269-740542	OSAGE TRL LOT 30 UTILITIES FOR JAN, 2014	201.98	
		317055-849582	LLMD A2 RANCHO PALMERAS DR UTILITIES FOR DEC, 2013	174.72	
		324083-740422	SANDPIPER DR/MANITOU UTILITIES FOR JAN, 2014	81.72	
		152991-419528	HWY 111 UTILITIES FOR JAN, 2014	72.78	
		152067-418436	44-860 ELDORADO DRIVE UTILITIES FOR JAN, 2014	63.68	
		152073-418442	44-950 ELDORADO DRIVE UTILITIES FOR JAN, 2014	53.44	
		152071-418440	44-500 INDIAN WELLS LANE UTILITIES FOR JAN, 2014	49.10	
		152069-418438	FIRE STATION #55 UTILITIES FOR JAN, 2014	45.74	
		542759-418520	44-950 ELDORADO DR COMMUNITY GARDEN UTILITIES FOR JAN, 2014	44.20	
		152599-419102	45318 INDIAN WELLS LN UTILITIES FOR JAN, 2014	38.04	
		314503-846420	OSAGE TRL MEDIAN WEST OF PAWNEE UTILITIES FOR JAN, 2014	36.92	
		152175-418598	44502 ELDORADO DR UTILITIES FOR JAN, 2014	36.92	
		314329-846220	45585 ELDORADO DR UTILITIES FOR JAN, 2014	34.12	
		134443-394192	44010 SUPERIOR COURT UTILITIES FOR JAN, 2014	29.40	
		314499-846416	OSAGE TRL LOT 4 UTILITIES FOR JAN, 2014	29.08	
		152173-418596	ELDORADO DR SE CORNER OF OSAGE TRL UTILITIES FOR JAN, 2014	26.84	
		308623-839674	INDIAN WELLS LANE MEDIANS UTILITIES FOR JAN, 2014	19.00	
		281261-740534	44-860 ELDORADO DR UTILITIES FOR JAN, 2014	15.00	3,093.86
44597	2/6/2014		SEUMALO, KEN		
		SCHOOL REIMB	EDUCATION REIMBURSEMENT FOR SEPT, 2013-DEC, 2013	3,072.36	3,072.36
44576	2/6/2014		LUMPKIN, RUSSELL L.		
		DTD 1/15/14	BUILDING INSPECTION, PLAN REVIEW, PERMIT ISSUANCE & CODE ENFORCEMENT FOR JAN 2014	3,072.00	3,072.00
44585	2/6/2014		PERFECT IMAGES JANITORIAL INC.		
		25520	CIVIC CENTER & CLUB DR BUILDING JANITORIAL SVCS FOR DEC, 2013	3,045.00	3,045.00
44599	2/6/2014		SILVER INK COMMUNICATIONS		
		14-0103	FEB 2014 NEWSLETTER EDITORIAL PLANNING, INTERVIEW, RESEARCH, WRITING, EDIT/PROOF	2,400.00	
		14-0102	CITY & PUBLIC RELATIONS MISC WRITING AND EDITING SVCS FOR OCT-DEC 2013	480.00	2,880.00
				1/30/2014	4:57 pm

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44538	2/6/2014		B.G. STRUCTURAL ENGINEERING		
		917.338	74-101 DESERT TENAJA PLAN CHECK SVCS-ENGINEER, ARCHITECTURE, ADMINISTRATION	1,250.00	
		917.333	76-237 VIA AREZZO PLAN CHECK SVCS-ENGINEER, ARCHITECTURE, ADMINISTRATION	575.00	
		917.335	75-540 CALLE DEL SUR PLAN CHECK SVCS-ENGINEER, ARCHITECTURE, ADMINISTRATION	387.50	
		917.339	44-052 ERIE COURT PLAN CHECK SVCS-ENGINEER, ARCHITECTURE, ADMINISTRATION	350.00	
		917.337	76-847 ROADRUNNER PLAN CHECK SVCS-ENGINEER, ARCHITECTURE, ADMINISTRATION	312.50	2,875.00
44592	2/6/2014		PWLC, II, INC.		
		87315	IWGR WHITEWATER CHANNEL LANDSCAPE MAINTENANCE FOR JAN, 2014	2,696.00	2,696.00
44583	2/6/2014		PALMS TO PINES AUTOMOTIVE		
		45992	2012 TOYOTA TACOMA LUBE OIL & FILTER, BRAKE CHECK & CABIN AIR FILTER REPLACEMENT	213.48	
		46687	2004 FORD SPORTS TRAC LUBE OIL & FILTER, CHECK BRAKES, FUEL & BATTERY SVC	172.60	
		47743	2013 FORD F250 LUBE, OIL, FILTER, BREAK CHECK & TIRE ROTATION MAINT SERVICE	80.20	
		46814	2008 FORD F150 LUBE OIL, FILTER, (4) NEW TIRES & TIRE MOUNT SVCS	945.57	
		47768	2007 FORD F150 COMPUTER SCAN, TIRE BALANCE, & SMOKE TEST	787.75	
		46813	2007 FORD F250 (2) NEW TIRES, FALKEN RADIAL & TIRE DISPOSAL FEES	405.09	2,604.69
44598	2/6/2014		SHASTA FIRE PROTECTION, INC.		
		2789	CITY PUBLIC WORKS SHOP SPRINKLER HEAD REPLACEMENT SERVICES ON DEC 11, 2013	2,510.00	2,510.00
44557	2/6/2014		GRAPHTEK INTERACTIVE		
		8018-1	NEWSLETTER DESIGN, LAYOUT & PROJECT MANAGEMENT SERVICES FOR FEB 2014 ISSUE	2,500.00	2,500.00
44611	2/6/2014		TOTALFUNDS BY HASLER		
		2578	CITY HALL POSTAGE METER PAYMENT & ADVANCE DEPOSIT FOR DEC, 2013	2,000.00	2,000.00
44556	2/6/2014		GLOBAL CTI		
		106023	1 YEAR GLOBAL SHIELD SHORTEL PHONE SYSTEM SUPPORT	1,984.00	1,984.00
44616	2/6/2014		WEX BANK		
		35351794	PW VEHICLE FLEET FUEL SUPPLY FOR DEC, 2013	1,791.45	1,791.45

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**CITY OF INDIAN WELLS**  
**02/06/2014 MEETING WARRANT LIST**

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44588	2/6/2014		PRINTING PLACE		
		132622	PRINT (5,000) 8-PAGE JANUARY, 2014 NEWSLETTERS	1,695.00	1,695.00
44545	2/6/2014		CDW GOVERNMENT, INC.		
		HZ86897	(1) G-TECH G-RAID WITH THUNDERBOLT HARD DRIVE ARRAY FOR COUNCIL VIDEO BACKUP	925.06	
		HX32997	(5) COMFORT CURVE KEYBOARDS & (1) 4-PORT DUAL MONITOR SWITCH FOR TECHNOLOGY DEPT	693.23	
		JB88111	(1) LOGITECH CLEAR CHAT COMFORT USB HEADSET FOR INFORMATION TECHNOLOGY MANAGER	48.18	1,666.47
44543	2/6/2014		CANON FINANCIAL SERVICES, INC		
		13444355	IRC5051 & IR5075 CANON COPIERS LEASES FOR FEB, 2014	1,489.33	1,489.33
44578	2/6/2014		MCKINNEY, WADE G.		
		LONG BEACH	2014 CITY MANAGERS DEPT MEETING REGISTRATION REIMB FOR FEB 5-7, 2014	625.00	
		SACRAMENTO	NEW MAYORS & COUNCIL MEMBERS ACADEMY TRAVEL EXPENSE REIMB FOR JAN 22-24, 2014	574.01	
		W.MCKINNEY	CALIFORNIA CITY MANAGEMENT FOUNDATION BOARD MEETING EXPENSE FY14/15 REIMBURSEMEN	286.28	1,485.29
44555	2/6/2014		FULTON DISTRIBUTING		
		311277	1/14 ZIP BAGS,CUPS,BOWLS,FORKS,FOIL,HOT CUP LIDS,NAPKINS,PLATES,STIRRERS,COKE	904.56	
		312211	FACIAL TISSUE, TOILET TISSUE, PAPER TOWELS, TRASH CAN LINERS, MAXI PADS, TAMPONS	492.55	1,397.11
44548	2/6/2014		CORELOGIC INFORMATION		
		81064156	REALQUEST ONLINE REAL ESTATE DATA FOR DEC, 2013	1,087.60	1,087.60
44558	2/6/2014		GREAT AMERICA LEASING CORP.		
		14743099	CANON 4045 & 7105 COPIER LEASES FOR FEB, 2013	999.01	999.01
44603	2/6/2014		STAPLES		
		3218399081	3V BATTERIES, CHAIR MAT, PAPER SUPPLY, DISH SOAP & COFFEE CREAMERS	335.48	
		3219019049	APPLE JUICE, PELLGRINO WATER, COFFEE CREAMERS, MOUSE PADS & COPY PAPER	235.69	
		3219850544	(1) "RECIEVED" STAMP & THERMAL CREDIT CARD PAPER ROLLS FOR FINANCE DEPT	159.99	
		3219850543	LIPTON TEA, CREAMERS, STICKIES, FOLDERS, DATE & PAID STAMPS	100.69	
		3219850545	(3) BOXES OF LETTER SIZE FILE FOLDERS FOR CITY SUPPLY	96.58	
		3219850546	(1) "PAID" VERSADATE STAMP FOR ACCOUNTING TECHNICIAN II FINANCE DEPT	58.27	986.70

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44529	1/22/2014		VISION SERVICE PLAN - (CA)		
		121858900001	VISION INSURANCE FOR FEB 2014	842.42	842.42
44563	2/6/2014		IMAGE SALES, INC.		
		36729	(4) RE-TRANSFER FILMS FOR PROPERTY OWNER ID CARD PRINTER	542.92	
		36776	(2) RE-TRANSFER FILMS FOR PROPERTY OWNER ID CARD PRINTER	265.96	808.88
44565	2/6/2014		INNOVATIVE DOCUMENT SOLUTIONS		
		137080	CANON IR5075 & IRC5051 COPIERS MAINTENANCE FOR DEC, 2013	501.81	
		137079	CANON IR7105 & CANON IR4045 COPIER MAINTENANCE FOR DEC, 2013	264.24	766.05
44575	2/6/2014		LSL CPA'S		
		9207	ADMISSIONS TAX FINANCIAL AUDIT SERVICES FOR 2013	563.00	
		9208	INVESTMENT REVIEW FINANCIAL AUDIT SERVICES FOR 2013	196.00	759.00
44602	2/6/2014		SOUTHWEST NETWORKS		
		14-1506	CITY HALL OFFSITE STORAGE SERVICES FOR FEB, 2014	538.92	
		14-1507	CITY HALL OFFSITE STORAGE SERVICE OVERAGES FOR DEC, 2013	194.40	733.32
44593	2/6/2014		RA STRUCTURAL ENGINEERING		
		B00-010-957-1	50-741 DESERT ARROYO PLAN CHECK SERVICE FOR JAN 2-10, 2014	520.00	
		B00-010-937-1	47-355 LAS CASCADAS COURT PLAN CHECK SERVICE FOR DEC 18, 2013	195.00	715.00
44564	2/6/2014		INLAND LIGHTING SUPPLIES, INC.		
		165425	(60) BOLLARD LANDSCAPE LIGHTS FOR MILES AVENUE	372.60	
		165238	(100) LIGHTBULBS FOR HWY 111 MEDIANS LANDSCAPE LIGHTING	270.00	642.60
44570	2/6/2014		JP TREE CARE CERTIFD ARBORIST		
		11645	CITY HALL HOLIDAY TREE LIGHTING & DECORATION REMOVAL SERVICE	640.00	640.00
44568	2/6/2014		JOHN DEERE LANDSCAPES		
		66755877	(2) WATER DRIPLINES AND (50) TEE BARBS FOR COMMUNITY GARDENS	382.00	
		66985835	(50) SPRINKLER HEADS FOR CITY PARKWAYS ALONG HWY 111	284.72	
		66958493	4-IN-1 SCREWDRIVER, SHARPENING TOOL, DUCT TAPE, WIRE NUTS, BLACK TARP, PVC PIPE	87.29	
		66967392	(100) 3/4" PVC PIPES FOR PW DEPT	25.92	
		66949268	THREADED BALL,PVC FITTINGS,SWIVEL ADAPTERS,PVC LOCK RELEASE TOOL & 4-WAY KEY	22.89	
		66755944	CREDIT (1) WATER DRIPLINE FOR COMMUNITY GARDENS	-182.90	619.92

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44618	2/6/2014		WINDSOR, MEL		
		9325	DEFERRED COMP OVERPAYMENT REFUND FOR DEC, 2013	595.00	<b>595.00</b>
44551	2/6/2014		ECONOLITE CONTROL PRODUCTS INC		
		110446	TRAFFIC SIGNAL CONTROLLER SOFTWARE UPGRADE	594.00	<b>594.00</b>
44584	2/6/2014		PARKHOUSE TIRE, INC.		
		2030117825	(4) NEW TIRES FOR 2012 TACOMA TRUCK	561.38	<b>561.38</b>
44549	2/6/2014		COUNTY OF RIVERSIDE		
		AN0000000230	ANIMAL SHELTER, FIELD SVC, LICENSES, OPERATIONS & MAINT. FOR DEC, 2013	546.95	<b>546.95</b>
44526	1/22/2014		STANDARD INSURANCE COMPANY		
		643033	LIFE INSURANCE/AD&D FOR FEB 2014	529.82	<b>529.82</b>
44607	2/6/2014		TELEPACIFIC COMMUNICATIONS		
		52715256-0	CITY HALL PHONE SERVICE FOR JAN 16-FEB 15, 2014	516.62	<b>516.62</b>
44527	1/22/2014		STATE BOARD OF EQUALIZATION		
		101637688	SALES AND USE TAX DUE FOR OCT TO DEC, 2013	466.00	<b>466.00</b>
44520	1/16/2014		CALIF. DEPT OF CONSERVATION		
		OCT13-DEC13	STRONG MOTION INSTRUMENTATION (SMI) FEES COLLECTED FOR OCT-DEC, 2013	464.28	<b>464.28</b>
44577	2/6/2014		MARK CIESLIKOWSKI PHOTOGRAPHY		
		2971	SUNNYLANDS ANNENBERG TOUR SHOOTING FEE & DVD BURNING PHOTOGRAPHY SVC	366.60	<b>366.60</b>
44587	2/6/2014		PIXELPUSHERS, INC. DBA CIVICA		
		2613	ANNUAL WEBSITE SSL CERTIFICATE FEES FOR JAN, 2013-DEC, 2014	354.00	<b>354.00</b>
44521	1/16/2014		CALIFORNIA BUILDING STANDARDS		
		OCT13-DEC13	CBSC FEES COLLECTED FOR OCT-DEC, 2013	325.80	<b>325.80</b>

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44546	2/6/2014		COACHELLA VALLEY VIOLENT CRIME		
		IW2013-002	PUBLIC SAFETY T-1 PHONE SERVICE FOR JUL-DEC, 2013	325.62	<b>325.62</b>
44579	2/6/2014		MSA SYSTEMS, INC.		
		SGM4948A	(2) MOTORCYCLE TICKET WRITER RECEIPT LABELS	280.99	<b>280.99</b>
44591	2/6/2014		PUBLIC RECORD		
		14626	CLERKS DEPT LEGAL NOTICE OF PUBLIC HEARING: 45410 COOK STREET ADDITION	156.00	
		14625	PLANNING DEPT LEGAL NOTICES NOTICE OF PUBLIC HEARING: BLOCK GRANT FOR DEC 3, 13	117.00	<b>273.00</b>
44533	2/6/2014		AGLIE IT, INC		
		0011592	EXCHANGE MAIL MIGRATION SERVICE TO OFFICE 365-BALANCE DUE	270.00	<b>270.00</b>
44590	2/6/2014		PRUDENTIAL OVERALL SUPPLY		
		20805373	CITY TOWEL, MATS & AIR FRESHENER SUPPLIES FOR JAN 8, 2014	137.23	
		20808773	CITY TOWEL, MATS & AIR FRESHENER SUPPLIES FOR JAN 15, 2014	109.79	<b>247.02</b>
44523	1/16/2014		DIVISION OF STATE ARCHITECT		
		OCT13-DEC13	DISABILITY ACCESS AND EDUCATION FEES (SB 1186) COLLECTED FOR OCT-DEC, 2013	184.80	<b>184.80</b>
44534	2/6/2014		AMERICAN FORENSIC NURSES		
		64237	(1) PUBLIC SAFETY BLOOD DRAW TESTING SERVICE	82.16	
		64178	(2) PUBLIC SAFETY BLOOD DRAW TESTING SERVICE	60.00	
		64270	(1) PUBLIC SAFETY BLOOD DRAW TESTING SERVICE	41.08	<b>183.24</b>
44560	2/6/2014		HI-LINE ELECTRIC CO., INC.		
		10279958	VARIOUS SIZED CABLE TIES FOR PW DEPT	180.63	<b>180.63</b>
44554	2/6/2014		FERNANDO'S BUST-A-BUG		
		73997	WALK OF HONOR PEST CONTROL SERVICE FOR JAN, 2013	20.00	
		73998	CIVIC CENTER EXTERIOR & INTERIOR PEST CONTROL SERVICE FOR JAN, 2013	96.00	
		73999	FIRE STATION PEST CONTROL SERVICE FOR JAN, 2014	50.00	<b>166.00</b>
44566	2/6/2014		IT'S A GRIND COFFEE HOUSE		
		DTD 1/17/14	COFFEE & PASTRIES FOR THE DOCTORS SHOW RESIDENT EVENT ON FEB 27, 2014	159.78	<b>159.78</b>

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44608	2/6/2014		TELEPACIFIC COMMUNICATIONS		
		52732813-0	EMERGENCY PHONE SERVICES FOR JAN 16-FEB 15, 2014	155.03	155.03
44614	2/6/2014		VERIZON CALIFORNIA		
		346-0407	CITY HALL FAX SERVICE FOR JAN 19 TO FEB 18, 2014	103.94	
		200-1815	TRAFFIC SIGNAL CONTROL PHONE LINE FOR JAN 13-FEB 12, 2014	49.20	153.14
44613	2/6/2014		UNITED CEREBRAL PALSY		
		DONATION	DONATION IN MEMORY OF DUSTIN NARZ	150.00	150.00
44601	2/6/2014		SOUTHERN CALIFORNIA GAS CO.		
		04162524872	45200 CLUB DR. UTILITIES FOR DEC 18, 2013-JAN 22, 2014	134.53	134.53
44604	2/6/2014		STAPLES		
		04871	COIN ENVELOPES & 2014 WEEKLY CALENDAR INSERT FOR PLANNING DEPT	114.43	
		17311	(2) 2" BINDERS FOR CITY AGREEMENTS	19.42	133.85
44580	2/6/2014		NAPA AUTO PARTS		
		109294	10-PIECE NEEDLE FILE SET & PAINT SPRAYGUN	104.74	
		106860	(1) FRONT TURN SIGNAL LIGHT BULB FOR MAINTENANCE DEPT CITY VEHICLE	8.62	113.36
44524	1/16/2014		SOUTHERN CALIFORNIA GAS CO.		
		04162524872	45200 CLUB DR. UTILITIES FOR NOV 18-DEC 18, 2013	110.13	110.13
44531	1/31/2014		SERVICEMASTER OF THE DESERT		
		25059	CARPET CLEANING SERVICE AT 44-950 ELDORADO DRIVE CITY MAINT DEPT OFFICE	105.00	105.00
44535	2/6/2014		AROUND-THE-CLOCK		
		140100106101	AFTER HOURS PHONE ANSWERING SERVICE FOR JAN 13 TO FEB 9, 2014	100.10	100.10
44572	2/6/2014		LCC RIVERSIDE COUNTY DIVISION		
		1528	ANNUAL MEMBERSHIP DUES FOR 2014	100.00	100.00
44596	2/6/2014		RIVERSIDE COUNTY SHERIFF DEPT.		
		SH0000023125	TRAFFIC MOTORCYCLE FUEL FOR NOV 26-DEC 11, 2013	94.68	94.68

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**CITY OF INDIAN WELLS**  
**02/06/2014 MEETING WARRANT LIST**

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44561	2/6/2014		HOLDEN & JOHNSON ARCHITECTS		
		1336401-1 0020	CONTRACT BUSINESS LICENSE APPLICATION REFUND	86.00	86.00
44571	2/6/2014		LASR-INK		
		11218	(1) PRINTER CARTRIDGE FOR TECHNOLOGY DEPT	85.12	85.12
44553	2/6/2014		FEDERAL EXPRESS CORP.		
		2-522-80762	EXPRESS MAIL SVC FINANCE DEPT FOR DEC 11, 2013	81.67	81.67
44609	2/6/2014		TIME WARNER CABLE		
		8448410760152292	CITY MANAGERS OFFICE CABLE TELEVISION SERVICE FOR JAN 14-FEB 13, 2014	80.69	80.69
44573	2/6/2014		LCC RIVERSIDE COUNTY DIVISION		
		W.MCKINNEY	LEAGUE OF CA CITIES RIVERSIDE COUNTY DIVISION GENERAL MEETING FOR JAN 13, 2014	40.00	
		D.HANSON	LEAGUE OF CA CITIES RIVERSIDE COUNTY DIVISION GENERAL MEETING FOR JAN 13, 2014	40.00	80.00
44536	2/6/2014		ARRANGEMENTS FLORAL & PARTY		
		42366	(1) GET WELL ARRANGEMENT FOR HOUSING AUTHORITY MEMBER B.FLETCHER	78.84	78.84
44544	2/6/2014		CANON SOLUTIONS AMERICA, INC.		
		988146165	SCEXPN WIDE FORMAT COPIER/SCANNER MAINTENANCE FOR JAN 2014	45.98	
		988137299	COLOR WAVE 300 COLOR PRINTER USAGE & MAINTENANCE FOR DEC, 2013	32.14	78.12
44582	2/6/2014		PALM DESERT ACE HARDWARE		
		181997	(2) 60-PIECE CERAMIC BRIQUETTE & STEM CASTER FOR PUBLIC WORKS DEPT	44.00	
		181987	8OZ CAN OF WOOD OIL & UTILITY LIGHTER FOR PUBLIC WORKS DEPT MAINTENANCE SUPPLIES	20.49	
		181903	(1) 12OZ CAN OF CLEAR SPRAY PAINT FOR PUBLIC WORKS DEPT	6.47	70.96
44594	2/6/2014		RADAR SHOP, THE		
		9818	(1) RE-CERTIFICATION OF RADAR UNITS WITH CERTIFICATE OF ACCURACY	66.00	66.00
44569	2/6/2014		JOHNSTONE SUPPLY		
		274092	(1) ICE MACHINE CLEANING SOLUTION FOR PW DEPT	63.78	63.78

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44586	2/6/2014		PHIL HENDRICKS POOL SERVICE		
		1400301-1 00109	2014 DUPLICATE PAYMENT OF MOBILE VENDOR BUSINESS LICENSE & STATE FEE REFUND	62.00	62.00
44612	2/6/2014		TURN OF THE CENTURY		
		1400301-1 0009	2014 MOBILE VENDOR BUSINESS LICENSE DUPLICATE PAYMENT REFUND	62.00	62.00
44550	2/6/2014		DESERT ELECTRIC SUPPLY		
		S2055061.001	(7) FLOURESCENT LAMPS FOR STREET NAME SIGNS	42.47	42.47
44528	1/22/2014		UNITED WAY OF THE DESERT		
		352000006506	PAYROLL EMPLOYEE CONTRIBUTIONS FOR JAN 17, 2014	40.00	40.00
44541	2/6/2014		BIRCH COMMUNICATIONS, INC.		
		15320704	LONG DISTANCE PHONE SERVICE FOR JAN 21-FEB 20, 2014	33.91	33.91
44606	2/6/2014		TCC SALES		
		11081	WOOD PATCH TUBE & 5 LBS OF NEW PAINTERS RAGS	18.66	
		11131	(1) ULTRA MARK VAN DYKE BROWN FURNITURE PEN FOR PUBLIC WORKS DEPT	7.55	26.21
44574	2/6/2014		LCC RIVERSIDE COUNTY DIVISION		
		1487	ANNUAL CONFERENCE BREAKFAST FOR W.MCKINNEY ON SEPT 19, 2013	25.00	25.00
44539	2/6/2014		BENETT, CONSTANCE M.		
		1400301-1 0108	REFUND TWO JAN 21, 2014 PAVILION PARTY TICKETS UNABLE TO ATTEND	20.00	20.00
44581	2/6/2014		NEXTEL COMMUNICATIONS		
		627757319-146	R.BOWEN LANDSCAPE SPECIALIST PUSH TO TALK CELL SVC FOR DEC 12, 2013-JAN 11, 2014	19.94	19.94
44537	2/6/2014		AT&T MOBILITY		
		287243904839	RAINBIRD LANDSCAPE CONTROLLER SIM CARD DATA SVC FOR DEC 12, 2013-JAN 11, 2014	16.50	16.50
44610	2/6/2014		TOPS N BARRICADES		
		1037224	(2) 2" U BOLTS FOR CITY SIGNAGE MOUNTING	7.56	7.56

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
44562	2/6/2014	Y11001913	HUB CONSTRUCTION SPECIALTIES, NUTS AND WASHERS FOR PW DEPT	3.88	3.88

100 checks in this report

TOTAL CITY WARRANTS 44519-44618: 1,119,013.95

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
<b>Wires :</b>					
1403	1/21/2014		INTERNAL REVENUE SERVICE		
		95-2489139	FWT, FICA & MEDICARE FOR JAN 17, 2014	62,247.80	62,247.80
1404	1/22/2014		CALIFORNIA PUBLIC EMPLOYEES		
		100000014205579	MEDICAL INSURANCE FOR FEB 2014	59,714.96	59,714.96
1402	1/17/2014		ICMA		
			CONTRIBUTIONS 401A, 457 & ROTH IRA FOR JAN 17, 2014	49,467.98	49,467.98
1406	1/22/2014		CALIFORNIA, STATE OF		
		925-0060-2	SDI & SWT DEPOSIT FOR JAN 17 2014	11,819.30	11,819.30
1400	1/10/2014		CALPERS RETIREMENT SYSTEM		
		6392517834	PAYROLL CONTRIBUTIONS FOR JAN 3, 2014	8,585.09	8,585.09
1405	1/22/2014		CALPERS RETIREMENT SYSTEM		
		6392517834	PAYROLL CONTRIBUTIONS FOR JAN 17, 2014	8,377.10	8,377.10
2828	1/16/2014		INDIAN WELLS EMPLOYEE ASSOC.		
		2379795	PAYROLL EE DUES FOR JAN 17, 2014	154.00	154.00

**PAYROLL WIRE DISBURSEMENTS 1400, 1402-1406 & 2828: 200,366.23**

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CITY OF INDIAN WELLS  
02/06/2014 MEETING WARRANT LIST

CHECK #	DATE	INVOICE #	VENDOR NAME/DESCRIPTION	INVOICE AMT	CHECK TOTAL
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EFT 12814-12867	99,330.57
2829-2831	3,197.24
<b>Total Net Payroll 01/17/2014</b>	<b>102,527.81</b>

EFT 12868-12894	71,119.24
2833	1,427.71
<b>Total Net Payroll 01/31/2014</b>	<b>72,546.95</b>

**TOTAL CITY DISBURSEMENTS: 1,494,454.94**

Note: Warrants 44519-44531 were issued prior to City Council approval.

CC/HA ACTION \_\_\_\_\_ MTG. DATE: 2-6-14  
 APPROVED  DENIED \_\_\_\_\_ REC/FILE \_\_\_\_\_ CONT. \_\_\_\_\_  
 OTHER \_\_\_\_\_  
 VOTE: YES 5 NO 0 ABSTAIN \_\_\_\_\_

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6D

*Pulled from Agenda and Discussion  
February 6, 2014*

## ***Indian Wells City Council***

### **Mayoral Rotation Ordinance 2014**

#### **REQUEST:**

In accordance with Council's Policy and Procedures, Council Member Hanson submits for Council consideration a proposed revision to Ordinance 666 (Mayor and Mayor Pro Tem Rotation Ordinance).

If approved, the Council would direct the City Attorney to prepare a resolution for the purpose of placing a ballot measure on the ballot for the November 2014 election amending Ordinance 666 to correct an oversight in the current language as to when the Mayor Pro Tem would serve his/her term after being elected to the Council.

#### **DISCUSSION:**

##### *Background:*

At the City Council meeting on February 16, 2012, the City Attorney submitted his Staff Report (copy included) covering a Proposed Ordinance (copy included) setting forth a process for the Annual Rotation of Mayor and Mayor Pro Tempore. At that meeting, the City Council unanimously approved placing the proposed Mayoral Rotation Ordinance on the ballot in the November 6, 2012 General Municipal Election.

The model used by the Council for the proposed Ordinance was in part obtained from the City of Palm Desert, a copy of which was provided to Council as part of the backup material used by the Council to decide the issue. I believe that, at the time of this discussion, the Council understood and believed that a newly elected

Council Member would be required to serve one year prior to serving as Mayor or Mayor-Pro Tem. In fact, the belief was so strong that after the election a discussion was held with the City Manager, the City Attorney and the members of Council and an announcement was made by the Mayor at a public event that Mary Roche would become Mayor and Patrick Mullany would become Mayor Pro-Tem. Because of the Mayor's action, questions were raised by several of the residents and it was agreed by the Council to submit the matter to a retired judge (JAMS). It was further agreed that the judge would simply rule based on their opinion of the words in the document and not based on the intent of the parties, which in most legal proceedings would be allowed and considered by a judge.

The JAMS Judge ruled that, according to her reading of the ordinance, a Council Member would be required to serve one year prior to serving as Mayor but not the Mayor Pro-Tem. While the Council at the time did not agree with the JAMS Judges' opinion, the Council chose not to appeal the JAMS Judge's decision.

The decision raised a number of questions, the most prevalent was; what would happen if the sitting Mayor was unable to serve for any reason and the Mayor Pro Tem was a newly elected Council Member who had not served a year as a Council Member. The Judge made her own interpretation of the process without a clear direction spelled out within the Ordinance. Furthermore, the JAMS Judge arbitrarily made the decision that a Council Member who was re-elected had continuing service rather than having a break in service by getting re-elected and, at the same time, determining that a new Council Member had seniority over a re-elected Council Member or an existing Council Member for the purpose of determining who should be first in line for Mayor or Mayor Pro-Tem even if that longevity were only for a minute.

*Analysis:*

The problem as described herein can be easily corrected. The Council by a majority vote can agree to place the issue on the ballot for the November Election so that the voters can determine if they want a Council Member to serve one year prior to serving as the Mayor Pro-Tem.

The only required change to the existing ordinance would occur in Section 1, Page 2, paragraph 5 with the insertion of "and Mayor Pro-Tem" after "Mayor" and before "until he/she has first completed at least one year".

If it were not believed that this issue had been covered in the preparation of the ordinance, the City Attorney would have created a mechanism to deal with a Mayor Pro-Tem who had not served a year on the Council succeeding the Mayor in the event the Mayor could not serve. That issue was not dealt with in the Ordinance because the City Attorney believed that ALL the provisions dealing with the Mayoral Rotation applied equally to the Mayor and Mayor Pro-Tem.

### **ATTACHMENTS:**

1. Suggested Redline Revision of Ordinance No. 666
2. City Attorney's Staff Report dated February 16, 2012 with proposed Ordinance
3. Palm Desert's Resolution 01-110 on Policy for Office of Mayor and Mayor Pro Tem
4. Ordinance No. 666 Adopted November 6, 2012
5. Minutes from Public Comments of the City Council Meeting of November 15, 2012
6. JAMS Opinion on Mayoral Rotation Ordinance dated November 26, 2012

**ORDINANCE NO. 666**

**AN ORDINANCE OF THE CITY OF INDIAN WELLS, CALIFORNIA,  
ADDING SECTION 2.08.160 TO TITLE 2, CHAPTER 2.08 OF THE INDIAN  
WELLS MUNICIPAL CODE PERTAINING TO THE APPOINTMENT OF THE  
MAYOR AND MAYOR PRO TEMPORE**

**THE PEOPLE OF THE CITY OF INDIAN WELLS, CALIFORNIA, DO ORDAIN AS  
FOLLOWS:**

**SECTION 1.** Title 2, Chapter 2.08 of the Indian Wells Municipal Code is amended by adding thereto Section 2.08.160, to read as follows:

"2.08.160 Appointment of Mayor and Mayor Pro Tempore.

(a) It is the purpose and intent of this section to provide for an automatic annual rotation of Council Members who occupy the positions of Mayor and Mayor Pro Tempore. The automatic annual rotation is further intended to permit as many Council Members as possible to have an opportunity during their membership on the City Council to occupy the position of Mayor and Mayor Pro Tempore. This section shall not be amended or repealed without first obtaining the approval of a majority of those persons voting on any such proposed amendment or repeal at a general or special municipal election called for this purpose.

(b) At the first regular meeting of the City Council in December of each year, or as soon thereafter as reasonably possible in the event any newly elected Council Members have not yet taken office due to delayed certification of election results, the City Council shall appoint from among the Council Members the Mayor and the Mayor Pro Tempore to immediately assume those positions, as applicable. Appointment to the position of Mayor and Mayor Pro Tempore shall be made on a rotating basis among all Council Members as follows, and the Mayor and Mayor Pro Tempore shall serve until their applicable successor is appointed or they vacate the applicable position due to inability to fulfill the responsibilities of that position, as defined in subsection (c):

(1) the Council Member having the longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor.

(2) the Council Member having the second longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor Pro Tempore.

(3) if two or more Council Members equally qualify hereunder for appointment as Mayor, any Council Member who has not previously served as Mayor during the period of current continuous membership of the qualified Council Member shall be appointed Mayor; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member who received the most votes among them in his/her most recent election to Council shall be appointed Mayor, and the Council Member who received the second most votes among them in his/her most recent election to Council shall be appointed Mayor Pro Tempore; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member whose name is then drawn by lot or other random procedure shall be appointed Mayor, and the other Council Member shall be appointed Mayor Pro Tempore.

(4) if two or more Council Members equally qualify hereunder for appointment as Mayor Pro Tempore, the appointment of Mayor Pro Tempore shall be made in accordance with the same priority and criteria as otherwise set forth for appointment as Mayor in subsection (b)(3).

(5) notwithstanding any provision to the contrary, a Council Member shall not be eligible for appointment as Mayor and Mayor Pro Tem until he/she has first completed at least one year of his/her current term on the City Council, unless no other Council Member can otherwise assume the position of Mayor due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c).

(6) if the position of Mayor becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Mayor Pro Tempore shall be appointed Mayor for the remainder of that term of Mayor, and shall be reappointed Mayor for the next full term of the position of Mayor if then qualified hereunder; provided, however, that service for the partial term as Mayor hereunder shall not be deemed to constitute service as Mayor for purposes of subsections (b)(1), (2) and (3).

(7) if the position of Mayor Pro Tempore becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Council Member next qualified to become Mayor Pro Tempore shall be appointed Mayor Pro Tempore for the remainder of that term of Mayor Pro Tempore, and shall be reappointed Mayor Pro Tempore for the next full term of the position of Mayor Pro Tempore if then qualified hereunder; provided, however, that service for the partial term as Mayor Pro Tempore hereunder shall not be deemed to constitute service as Mayor Pro Tempore for purposes of subsections (b)(1), (2) and (3).

(c) A Council Member shall not be appointed Mayor or Mayor Pro Tempore, and the Mayor or Mayor Pro Tempore shall be deemed to have vacated their position, due to inability to fulfill the responsibilities of that position. As used in this section, the term "inability to fulfill the responsibilities of that position" shall mean at least one of the following:

(1) unexcused absences from more than four (4) regular or special City Council meetings within the twelve (12) month period prior to appointment as Mayor or Mayor Pro Tempore, as applicable, or during the period of service as Mayor or Mayor Pro Tempore, as applicable;

(2) resignation from or voluntary decision not to assume appointment to the position of Mayor or Mayor Pro Tempore, as applicable;

(3) death, or physical incapacity due to medical condition severely limiting the ability of the Mayor or Mayor Pro Tempore, as applicable, to perform ongoing duties assigned to them by City policy or the City Council;

(4) mental incapacity (such as by reason of severe stroke, serious head injury, serious nervous breakdown, or serious mental illness) of the Council Member otherwise qualified hereunder to be appointed to, or serving in the applicable position of, Mayor or Mayor Pro Tempore, as reasonably determined at a public meeting by a majority of the City Council as then fully constituted;

CC/HA ACTION \_\_\_\_\_ MTG. DATE: 2-16-12  
APPROVED  DENIED \_\_\_\_\_ REC/FILE \_\_\_\_\_ CONT \_\_\_\_\_  
OTHER as Revised  
VOTE: YES 4 NO 0 ABSTAIN \_\_\_\_\_

Excused 1  
Absence  
(Mullany)

# STAFF REPORT

DATE: February 16, 2012  
TO: Honorable Mayor and City Council Members  
FROM: Stephen P. Deitsch, City Attorney  
SUBJECT: Proposed Ordinance Pertaining to Annual Rotation of Mayor and Mayor Pro Tempore

(C)(5) after word "Removal" insert  
"as applicable," and (C)(6)  
should be subsection (b) not  
(6)

## SUMMARY:

The City Attorney and City Staff bring forward for consideration and direction by the City Council a proposed Ordinance pertaining to the annual rotation of Mayor and Mayor Pro Tempore which, if approved by the City Council, could ultimately be submitted to the voters at the November 6, 2012 general municipal election.

## BACKGROUND:

At its November 9 and 10, 2011 special meetings and November 17, 2011 regular meeting, the City Council generally discussed Mayor Hanson's proposal to bring forward a Charter amendment requiring annual rotation of the Mayor and Mayor Pro Tempore. At its regular meeting on December 15, 2011, the City Council directed the City Attorney and Staff to bring forward for consideration at a future Council meeting a proposed ballot measure concerning this matter for submission to the voters.

The City Attorney has prepared for consideration by the Council the proposed Mayoral Rotation Ordinance attached to this Staff Report. The proposed Ordinance has been reviewed by the Mayor, as well as by a group of City residents who have indicated interest in this issue (Tom Connor, Dana Cephas and Andy Elchuck).

## ANALYSIS:

The City Attorney recommends, based on the following, that instead of a Charter amendment, a voter approved ordinance be considered. First, in either case, a voter approved Charter amendment or ordinance could be repealed or amended in the future only by a majority of voters voting on such repeal or amendment, unless the voter approved measure expressly provides to the contrary. The proposed Ordinance expressly provides that it may be repealed or amended only upon such a vote of the people. Second, the subject matter of the proposed Ordinance, selection of Mayor and Mayor Pro Tempore, logically would be placed in the Municipal Code as an ordinance in Title 2 entitled, "Administration and Personnel", and in particular in Chapter 2.08 entitled, "City Council." On the other hand, although this matter is not precluded by law from placement in the City's Charter, the Charter as adopted by the City is a more general document which does not address specific matters such as this.

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The proposed Ordinance provides for the following:

- (1) annual automatic rotation of the Mayor and Mayor Pro Tem
- (2) priority for appointment as Mayor given to the Council Member who has served the longest current continuous membership on Council without serving as Mayor (second longest would be Mayor Pro Tempore)
- (3) in case of a tie, priority based on (a) longest current continuous membership on Council without ever having served as Mayor at all during that time, (b) receipt of most votes in most recent election, and (c) random selection by lot
- (4) a requirement that a Council Member serve at least one year on Council before becoming Mayor, unless no other Council Member fulfills the criteria for priority appointment
- (5) automatic promotion of Mayor Pro Tempore to fill the remaining term of Mayor, in the event of a vacancy, plus additional service thereafter for the succeeding full term of Mayor
- (6) prohibition of service as Mayor under specified circumstances, such as a four (4) or more unexcused absences from Council meetings; death or mental/physical disability preventing performance as Mayor; censure for repeated failure to represent the City Council's adopted positions when representing the City without corrective action by the Council Member after written warning; arrest for a felony, or for any crime of violence or moral turpitude; voluntary decision not to serve as Mayor

In effect, assuming normal application of the foregoing without unanticipated vacancy in the position of Mayor, no Council Member would serve as Mayor twice within a 5 year period.

If the City Council approves of the proposed Ordinance, with or without changes, the Council may direct City Staff to bring back to Council the required resolutions calling for placement of this question on November 6, 2012 election ballot.

**RECOMMENDATION:**

The City Attorney and City Staff recommend that the City Council consider and provide direction concerning the attached draft of a proposed Ordinance pertaining to the appointment of the Mayor and Mayor Pro Tempore.

  
Roderick J. Wood, Interim City Manager

Attachment (1)

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*DRAFT*

Ordinance Bill No. 2012-\_\_

**AN ORDINANCE OF THE CITY OF INDIAN WELLS, CALIFORNIA,  
ADDING SECTION 2.08.160 TO TITLE 2, CHAPTER 2.08 OF THE INDIAN  
WELLS MUNICIPAL CODE PERTAINING TO THE APPOINTMENT OF THE  
MAYOR AND MAYOR PRO TEMPORE**

**THE PEOPLE OF THE CITY OF INDIAN WELLS, CALIFORNIA, DO ORDAIN AS FOLLOWS:**

Section 1. Title 2, Chapter 2.08 of the Indian Wells Municipal Code is amended by adding thereto Section 2.08.160, to read as follows:

**"2.08.160 Appointment of Mayor and Mayor Pro Tempore**

(a) It is the purpose and intent of this section to provide for an automatic annual rotation of Council Members who occupy the positions of Mayor and Mayor Pro Tempore. The automatic annual rotation is further intended to permit as many Council Members as possible to have an opportunity during their membership on the City Council to occupy the position of Mayor and Mayor Pro Tempore. This section shall not be amended or repealed without first obtaining the approval of a majority of those persons voting on any such proposed amendment or repeal at a general or special municipal election called for this purpose.

(b) At the first regular meeting of the City Council in December of each year, or as soon thereafter as reasonably possible in the event any newly elected Council Members have not yet taken office due to delayed certification of election results, the City Council shall appoint from among the Council Members the Mayor and the Mayor Pro Tempore to immediately assume those positions, as applicable. Appointment to the position of Mayor and Mayor Pro Tempore shall be made on a rotating basis among all Council Members as follows, and the Mayor and Mayor Pro Tempore shall serve until their applicable successor is appointed or they vacate the applicable position due to inability to fulfill the responsibilities of that position, as defined in subsection (c):

(1) the Council Member having the longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor.

(2) the Council Member having the second longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor Pro Tempore.

(3) if two or more Council Members equally qualify hereunder for appointment as Mayor, any Council Member who has not previously served as Mayor during the period of current continuous membership of the qualified Council Member shall be appointed Mayor; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member who received the most votes among them in his/her most recent election to Council shall be appointed Mayor, and the Council Member who received the second most votes among them in his/her most recent election to Council shall be appointed Mayor Pro Tempore; and if two or more Council Members thereafter equally qualify hereunder for appointment as

Mayor, the Council Member whose name is then drawn by lot or other random procedure shall be appointed Mayor, and the other Council Member shall be appointed Mayor Pro Tempore.

(4) if two or more Council Members equally qualify hereunder for appointment as Mayor Pro Tempore, the appointment of Mayor Pro Tempore shall be made in accordance with the same priority and criteria as otherwise set forth for appointment as Mayor in subsection (b)(3).

(5) notwithstanding any provision to the contrary, a Council Member shall not be eligible for appointment as Mayor until he/she has first completed at least one year of his/her current term on the City Council, unless no other Council Member can otherwise assume the position of Mayor due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c).

(6) if the position of Mayor becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Mayor Pro Tempore shall be appointed Mayor for the remainder of that term of Mayor, and shall be reappointed Mayor for the next full term of the position of Mayor if then qualified hereunder; provided, however, that service for the partial term as Mayor hereunder shall not be deemed to constitute service as Mayor for purposes of subsections (b)(1), (2) and (3).

(7) if the position of Mayor Pro Tempore becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Council Member next qualified to become Mayor Pro Tempore shall be appointed Mayor Pro Tempore for the remainder of that term of Mayor Pro Tempore, and shall be reappointed Mayor Pro Tempore for the next full term of the position of Mayor Pro Tempore if then qualified hereunder; provided, however, that service for the partial term as Mayor Pro Tempore hereunder shall not be deemed to constitute service as Mayor Pro Tempore for purposes of subsections (b)(1), (2) and (3).

(c) A Council Member shall not be appointed Mayor or Mayor Pro Tempore, and the Mayor or Mayor Pro Tempore shall be deemed to have vacated their position, due to inability to fulfill the responsibilities of that position. As used in this section, the term "inability to fulfill the responsibilities of that position" shall mean at least one of the following:

(1) unexcused absences from more than four (4) regular or special City Council meetings within the twelve (12) month period prior to appointment as Mayor or Mayor Pro Tempore, as applicable, or during the period of service as Mayor or Mayor Pro Tempore, as applicable;

(2) resignation from or voluntary decision not to assume appointment to the position of Mayor or Mayor Pro Tempore, as applicable;

(3) death, or physical incapacity due to medical condition severely limiting the ability of the Mayor or Mayor Pro Tempore, as applicable, to perform ongoing duties assigned to them by City policy or the City Council;

(4) mental incapacity (such as by reason of severe stroke, serious head injury, serious nervous breakdown, or serious mental illness) of the Council Member otherwise qualified hereunder to be appointed to, or serving in the applicable position of, Mayor or Mayor Pro

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Tempore, as reasonably determined at a public meeting by a majority of the City Council as then fully constituted;

(5) upon the case by case determination by the City Council, in its discretion, to apply the following to the appointment or removal of the Mayor or Mayor Pro Tempore, as applicable: censure at a public meeting by a majority of the City Council, as then fully constituted, resulting from either (A) a repeated failure of the Mayor or Mayor Pro Tempore, as applicable, to represent the City Council's adopted positions when representing the City, and not him or herself individually, after the City Council had first provided a written warning concerning such failure, or (B) a violation of a requirement of law pertaining to conduct by public officials, other than as set forth in subsection (c)(6), as determined by a governmental commission, agency or officer not a part of the City;

(6) arrest while Mayor or Mayor Pro Tempore, as applicable, for a felony or any crime of violence or moral turpitude; provided that if and when the prosecution of such felony or other crime is terminated without a plea agreement or conviction, then the Council Member shall thereafter be placed in the highest priority behind the Mayor or Mayor Pro Tempore, as applicable, as otherwise set forth in subsection (6).

(d) As used in this section, the terms "qualify", "qualified" and "qualify hereunder" mean that a Council Member meets the priority and criteria established for selection as Mayor or Mayor Pro Tem, as applicable, as set forth in subsection (b)."

Section 2. If any section, subsection, sentence, clause, phrase or provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other provision or applications, and to this end the provisions of this Ordinance are declared to be severable. The People hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause, phrase or provision thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or provisions thereof be declared invalid or unconstitutional.

Section 3. This Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Indian Wells voting at a General Municipal Election to be held on November 6, 2012, and shall take effect immediately after the City Council has certified the results of the General Municipal Election by resolution.

Section 4. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 6, 2012, by signing where indicated below.

I hereby certify that the foregoing Ordinance was **PASSED, APPROVED AND ADOPTED** by the people of the City of Indian Wells on the \_\_\_ day of November, 2012.

Dated:

\_\_\_\_\_  
DOUGLAS H. HANSON  
MAYOR

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**RESOLUTION NO. 01-110  
OF THE CITY OF PALM DESERT**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT,  
CALIFORNIA, SETTING FORTH A POLICY ON THE OFFICE OF MAYOR  
AND THE OFFICE OF MAYOR PRO-TEMPORE**

WHEREAS, the City Council of the City of Palm Desert, California, must appoint from its own members two Council members to serve as Mayor and Mayor Pro-Tempore; and

WHEREAS, it has been the desire of each City Council serving the City of Palm Desert since incorporation to make these positions honorary in nature, held for a one-year period of time; and

WHEREAS, it is this City Council's opinion that each member elected to the Council is equally qualified and deserving to hold these offices, and each Council member should be given ample opportunity to serve in one or both of these offices.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Palm Desert, California, that the appointments of Mayor and Mayor Pro-Tempore shall be made on an annual rotating basis, and no one Council member shall serve a term in either office to exceed a one-year period of time. The selection shall be made and the term commence at the first regular council meeting in December.

BE IT FURTHER RESOLVED, prior to any member of the Council being appointed as Mayor such Council member shall have been a member of the Council for approximately two years and the Mayor Pro-Tempore shall have been a member of the Council for at least one year prior to being selected for those respective offices.

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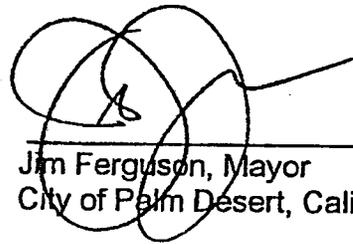
PASSED, APPROVED AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the 11th day of October, 2001, by the following vote, to wit:

AYES:           BENSON, CRITES, KELLY, SPIEGEL, FERGUSON

NOES:           NONE

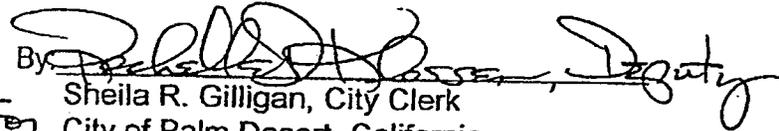
ABSENT:        NONE

ABSTAIN:       NONE

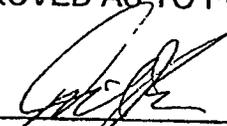


Jim Ferguson, Mayor  
City of Palm Desert, California

ATTEST:

By:   
Sheila R. Gilligan, City Clerk  
for City of Palm Desert, California

APPROVED AS TO FORM:

By:   
David J. Erwin, City Attorney  
City of Palm Desert, California

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**ORDINANCE NO. 666**

**AN ORDINANCE OF THE CITY OF INDIAN WELLS, CALIFORNIA,  
ADDING SECTION 2.08.160 TO TITLE 2, CHAPTER 2.08 OF THE INDIAN  
WELLS MUNICIPAL CODE PERTAINING TO THE APPOINTMENT OF THE  
MAYOR AND MAYOR PRO TEMPORE**

**THE PEOPLE OF THE CITY OF INDIAN WELLS, CALIFORNIA, DO ORDAIN AS  
FOLLOWS:**

**SECTION 1.** Title 2, Chapter 2.08 of the Indian Wells Municipal Code is amended by adding thereto Section 2.08.160, to read as follows:

"2.08.160 Appointment of Mayor and Mayor Pro Tempore.

(a) It is the purpose and intent of this section to provide for an automatic annual rotation of Council Members who occupy the positions of Mayor and Mayor Pro Tempore. The automatic annual rotation is further intended to permit as many Council Members as possible to have an opportunity during their membership on the City Council to occupy the position of Mayor and Mayor Pro Tempore. This section shall not be amended or repealed without first obtaining the approval of a majority of those persons voting on any such proposed amendment or repeal at a general or special municipal election called for this purpose.

(b) At the first regular meeting of the City Council in December of each year, or as soon thereafter as reasonably possible in the event any newly elected Council Members have not yet taken office due to delayed certification of election results, the City Council shall appoint from among the Council Members the Mayor and the Mayor Pro Tempore to immediately assume those positions, as applicable. Appointment to the position of Mayor and Mayor Pro Tempore shall be made on a rotating basis among all Council Members as follows, and the Mayor and Mayor Pro Tempore shall serve until their applicable successor is appointed or they vacate the applicable position due to inability to fulfill the responsibilities of that position, as defined in subsection (c):

(1) the Council Member having the longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor.

(2) the Council Member having the second longest current continuous membership on the City Council without serving as Mayor shall be appointed Mayor Pro Tempore.

(3) if two or more Council Members equally qualify hereunder for appointment as Mayor, any Council Member who has not previously served as Mayor during the period of current continuous membership of the qualified Council Member shall be appointed Mayor; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member who received the most votes among them in his/her most recent election to Council shall be appointed Mayor, and the Council Member who received the second most votes among them in his/her most recent election to Council shall be appointed Mayor Pro Tempore; and if two or more Council Members thereafter equally qualify hereunder for appointment as Mayor, the Council Member whose name is then drawn by lot or other random procedure shall be appointed Mayor, and the other Council Member shall be appointed Mayor Pro Tempore.

(4) if two or more Council Members equally qualify hereunder for appointment as Mayor Pro Tempore, the appointment of Mayor Pro Tempore shall be made in accordance with the same priority and criteria as otherwise set forth for appointment as Mayor in subsection (b)(3).

(5) notwithstanding any provision to the contrary, a Council Member shall not be eligible for appointment as Mayor until he/she has first completed at least one year of his/her current term on the City Council, unless no other Council Member can otherwise assume the position of Mayor due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c).

(6) if the position of Mayor becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Mayor Pro Tempore shall be appointed Mayor for the remainder of that term of Mayor, and shall be reappointed Mayor for the next full term of the position of Mayor if then qualified hereunder; provided, however, that service for the partial term as Mayor hereunder shall not be deemed to constitute service as Mayor for purposes of subsections (b)(1), (2) and (3).

(7) if the position of Mayor Pro Tempore becomes vacant due to inability to fulfill the responsibilities of that position, as that term is defined in subsection (c), the Council Member next qualified to become Mayor Pro Tempore shall be appointed Mayor Pro Tempore for the remainder of that term of Mayor Pro Tempore, and shall be reappointed Mayor Pro Tempore for the next full term of the position of Mayor Pro Tempore if then qualified hereunder; provided, however, that service for the partial term as Mayor Pro Tempore hereunder shall not be deemed to constitute service as Mayor Pro Tempore for purposes of subsections (b)(1), (2) and (3).

(c) A Council Member shall not be appointed Mayor or Mayor Pro Tempore, and the Mayor or Mayor Pro Tempore shall be deemed to have vacated their position, due to inability to fulfill the responsibilities of that position. As used in this section, the term "inability to fulfill the responsibilities of that position" shall mean at least one of the following:

(1) unexcused absences from more than four (4) regular or special City Council meetings within the twelve (12) month period prior to appointment as Mayor or Mayor Pro Tempore, as applicable, or during the period of service as Mayor or Mayor Pro Tempore, as applicable;

(2) resignation from or voluntary decision not to assume appointment to the position of Mayor or Mayor Pro Tempore, as applicable;

(3) death, or physical incapacity due to medical condition severely limiting the ability of the Mayor or Mayor Pro Tempore, as applicable, to perform ongoing duties assigned to them by City policy or the City Council;

(4) mental incapacity (such as by reason of severe stroke, serious head injury, serious nervous breakdown, or serious mental illness) of the Council Member otherwise qualified hereunder to be appointed to, or serving in the applicable position of, Mayor or Mayor Pro Tempore, as reasonably determined at a public meeting by a majority of the City Council as then fully constituted;

(5) upon the case by case determination by the City Council, in its discretion, to apply the following to the appointment or removal, as applicable, of the Mayor or Mayor Pro Tempore, as applicable: censure at a public meeting by a majority of the City Council, as then fully constituted, resulting from either (A) a repeated failure of the Mayor or Mayor Pro Tempore, as applicable, to represent the City Council's adopted positions when representing the City, and not him or herself individually, after the City Council had first provided a written warning concerning such failure, or (B) a violation of a requirement of law pertaining to conduct by public officials, other than as set forth in subsection (c)(6), as determined by a governmental commission, agency or officer not a part of the City;

(6) arrest while Mayor or Mayor Pro Tempore, as applicable, for a felony or any crime of violence or moral turpitude; provided that if and when the prosecution of such felony or other crime is terminated without a plea agreement or conviction, then the Council Member shall thereafter be placed in the highest priority behind the Mayor or Mayor Pro Tempore, as applicable, as otherwise set forth in subsection (b).

(d) As used in this section, the terms "qualify", "qualified" and "qualify hereunder" mean that a Council Member meets the priority and criteria established for selection as Mayor or Mayor Pro Tem, as applicable, as set forth in subsection (b)."

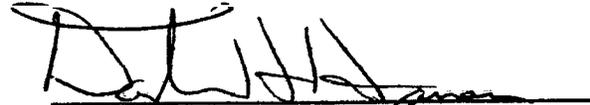
**SECTION 2.** If any section, subsection, sentence, clause, phrase or provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other provision or applications, and to this end the provisions of this Ordinance are declared to be severable. The People hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause, phrase or provision thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or provisions thereof be declared invalid or unconstitutional.

**SECTION 3.** This Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Indian Wells voting at a General Municipal election to be held on November 6, 2012, and shall take effect immediately after the City Council has certified the results of the General Municipal election by resolution.

**SECTION 4.** The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 6, 2012, by signing where indicated below.

I hereby certify that the foregoing Ordinance was **PASSED, APPROVED AND ADOPTED** by the people of the City of Indian Wells on the 6<sup>th</sup> day of November, 2012.

Dated: December 6, 2012



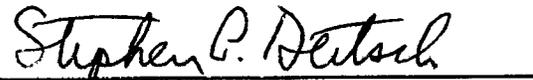
**DOUGLAS H. HANSON**  
MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**



**RODERICK J. WOOD**  
INTERIM CITY MANAGER/CITY CLERK



**STEPHEN P. DEITSCH**  
CITY ATTORNEY

**A. Public Comments**

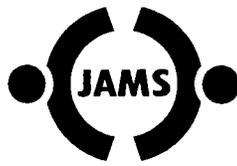
Interim City Manager Rod Wood stated as an outcome of the residents voting their approval of Measure "Q" [an Ordinance relating to the Mayoral rotation process] a number of people have indicated there is ambiguity in that language as to whom receives the position of Mayor and Mayor Pro Tem. Also, the City has received a threat of litigation on this matter. Mr. Wood further stated it has been discussed by Council this morning in Closed Session that in order to resolve any ambiguities in that Ordinance, the Council has directed the Interim City Manager to initiate the use of JAMS, which is an arbitration group using retired Judges to review the Ordinance to independently and separately render an opinion as to what the language in that Ordinance means in terms of who would be placed in the positions of Mayor and Mayor Pro Tem. Mr. Wood stated we should have a definitive response from JAMS before the December 6, 2012 meeting wherein the two Council Members Elect are sworn into office and the Mayor and Mayor Pro Tem positions are designated.

Mr. David Ramsay, resident, stated Council Members are servants of the people.

**B. Response to Prior Public Comments**

Finance Director Kevin McCarthy answered questions raised by Indian Wells resident Denny Booth regarding funding contributions to the World Affairs Council and Children's Discovery Museum and the City's budget.

**5. PUBLIC HEARINGS**



THE RESOLUTION EXPERTS®

11/28/12 AM 09:49 CITY OF IW

**JUDGE ANN KOUGH (Ret.)**

**JAMS**

**707 Wilshire Boulevard**

**46<sup>th</sup> Floor**

**Los Angeles, CA 90017**

**213-620-1133**

**TO: Roderick J. Wood**  
**City Manager, City of Indian Wells**

**RE: Opinion on the Mayoral Rotation Ordinance**  
**JAMS Ref: 1220045372**

**DATE: November 26, 2012**

I have been asked by the City for an opinion on the appropriate interpretation and application of the Mayoral Rotation Ordinance (“the Ordinance”) adopted by the voters of the City in the November municipal election. In connection therewith I was provided the following: Mr. Wood’s letters of November 16, 2012 and November 19, 2012 setting forth the assignment and giving certain background information; a copy of the Ordinance; the City Attorney’s Impartial Analysis of Measure “Q”; the Staff Report and all attachments concerning a Ballot Measure pertaining to Annual Rotation of Mayor and Mayor Pro Tempore presented at the June 21, 2012 City Council meeting; the Staff Report and all attachments concerning a Proposed Ordinance Pertaining to Annual Rotation of Mayor and Mayor Pro Tempore presented at the February 16, 2012 City Council meeting; the Staff Report and all attachments concerning Council Consideration of Adopting a Resolution to Amend the Policy Manual to Establish a Rotation System of Mayor, or Other Options presented at the November 17, 2011 City Council meeting; and access to video of the City Council meetings of November 17, 2011, February 16, 2012 and June 21, 2012. I was asked to respond specifically to six questions posed by the City regarding application of the Ordinance to various factual scenarios.

As a preliminary matter, I was asked to research and consider whether in rendering my opinion I could consider anything other than the Ordinance itself and the City Attorney’s Impartial Analysis, given that the Ordinance, while placed on the ballot as an initiative of the City Council, was adopted by the voters rather than the Council. Statutory interpretation requires a three-step process: first, courts should examine the actual language of the statute, giving the words their ordinary, everyday meaning, and if the meaning is without ambiguity, doubt or uncertainty, then the language controls and there is nothing to interpret or construe; if the meaning of the words is not clear, courts must take a second step and refer to the legislative

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history of the statute; and third, courts must then apply reason, practicality and common sense to the language of the statute if the first two steps have not revealed a clear meaning. *See Maricela C. v. Superior Court* (1998) 66 Cal. App. 4<sup>th</sup> 1138. This rule applies to ordinances as well as statutes. *See Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal. App. 4<sup>th</sup> 109. Just as with legislatively enacted statutes, courts first looks to the words of a voter-adopted enactment, since the words used are generally the most reliable indicator of the intent of the electorate. *See People v. Spark* (2004) 121 Cal. App. 4<sup>th</sup> 259. Voters are presumed to have adopted and incorporated accepted judicial constructions when they use the construed terms in enactments adopted by initiative. *See Wilson v. John Crane, Inc.* (2000) 81 Cal. App. 4<sup>th</sup> 847. In ascertaining the voters' intent, courts must look to the language of the initiative and accord words their usual, ordinary and common sense meaning based upon the language used and the evident purpose for which the statute or ordinance was adopted; generally courts will interpret measures adopted by vote of the people in such manner to give effect to the intent of the voters adopting it. *See People v. Davis* (1996) 42 Cal. App. 4<sup>th</sup> 806; *accord, Burger v. Employees' Retirement System* ((1951) 101 Cal. App. 2d 847. When the language used in a voter initiative is ambiguous, courts refer to other indicia of the voters' intent, particularly the analysis and arguments contained in the official voter pamphlet. *See People v. Rizo* (2000) 22 Cal. 4<sup>th</sup> 681.

The court's overriding purpose in construing a statute or ordinance is to ascertain the intent of its enactors and to give the statute or ordinance a reasonable construction conforming to that intent. *Massey v. Workers' Comp. Appeals Bd.* (1993) 5 Cal. 4<sup>th</sup> 674, 681; *accord, Home Depot v. Contractors' State License Bd.* (1996) 41 Cal. App. 4<sup>th</sup> 1592; *MacIsaac v. Waste Management Collection and Recycling* (2005) 134 Cal. App. 4<sup>th</sup> 1076. Statutes must be given a fair and reasonable interpretation, with due regard to the language used and the purpose sought to be accomplished. *Cedars of Lebanon Hosp. v. County of L.A.* (1950) 35 Cal. 2d 729, 734-735; *Home Depot, supra*. The "plain meaning" ruling of statutory construction does not prevent courts from determining whether the literal meaning of a statute comports with its purpose. *California School Employees Assn. v. Governing Board* (1994) 8 Cal. 4<sup>th</sup> 333, 340; *Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal. App. 4<sup>th</sup> 47, 54. Thus, although the words of the measure are the most useful guide in determining intent, the language should not be viewed in isolation, but rather in context, keeping in mind the statutory purpose. *Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 798; *MacIsaac, supra*.

Based upon the above-cited case law, I find that I may consider all of the information provided in order to determine the purpose of the Ordinance and if, but only if, I find the language of the Ordinance to be ambiguous, to determine the meaning of the Ordinance. *See Kaufman & Broad Communities v. Performance Plastering* (2005) 133 Cal. App. 4<sup>th</sup> 26.

In performing my analysis, I have assumed the following given facts: Council Members-Elect Mertens and Peabody were elected to the Council in the November 6, 2012 municipal election; Council Member Hanson was re-elected in the same election, he was first elected in 2008, and he served as Mayor during the calendar year 2012; Council Member Roche was elected in 2010 and has not served as Mayor in her current term; Council Member Mullany was initially elected in 2006, was re-elected in 2010, and served as Mayor in calendar year 2011; the current Mayor Pro Tem, Council Member Powers, was not re-elected in the November election and his term now expires. In the November election, Council Member-Elect Mertens received

more votes than Council Member Hanson, and Council Member Hanson received more votes than Council Member-Elect Peabody (based on uncertified election results). I have further assumed that currently, and for the timeframe anticipated by the City's questions, none of the five council members would be subject to disqualification under section (c) of the Ordinance (for unexcused absences, resignation or decision not to assume appointment, death or physical incapacity, mental incapacity, censure, or arrest for a felony or crime of moral turpitude). Finally, I have assumed that the City is a general law city as opposed to a charter city (as no documents referencing the City as a charter city and any effect such a status might have on these issues was provided).

Government Code section 36801 provides that a city council is to select one of its number as Mayor and one as Mayor Pro Tem at the council meeting where the declaration of election results is made pursuant to Elections Code sections 10262-10263; nowhere in the Government Code, however, is there a requirement that such selection occur in any particular manner. The stated purpose of the Ordinance, as set forth in Section 1, adding Section 2.08.160 to the Indian Wells Municipal Code, is to provide for an automatic annual rotation of council members who occupy the positions of Mayor and Mayor Pro Tem, so as to permit as many council members as possible to have an opportunity to be Mayor and Mayor Pro Tem. The legislative history of the Ordinance, and the comments of both council members and the public in council meetings where the proposed ordinance was discussed, indicate that from 2004 to 2010 the Mayor and Mayor Pro Tem were chosen on the basis of an annual rotation but that, for some reason, the Council changed to an annual majority vote selection in 2010. Both council members and constituents voiced the opinion that the change to majority vote caused politics to enter in to the selection and, as one council member termed it, caused "rule by clique." From the legislative history, and especially from the comments of members of the public at council meetings, I find that the purpose of the Ordinance, as enacted by the voters, is to take politics out of the selection of Mayor and Mayor Pro Tem and provide for a fair opportunity for all council members to occupy these positions on a rotating basis.

With that purpose in mind, I address the six questions posed by the City:

1. Under the Ordinance, who [by name] should be seated as Mayor and as Mayor Pro Tempore once the newly constituted City Council reorganizes for calendar year 2013 at the December, 6 2012 City Council meeting?

Mayor: Council Member Roche. She is the council member having the longest current continuous membership on the City Council without serving as Mayor [see Section 2.08.160(b)(1)]. Both Council Members Mullany and Hanson have been continuously on the Council longer, but both have previously served as Mayor. Council Members-Elect Mertens and Peabody are not eligible for appointment as Mayor under (b)(5) because they have not yet completed at least one year and other council members are available to assume the position.

Mayor Pro Tem: Council Member-Elect Mertens. After Council Member Roche, Council Members-Elect Mertens and Peabody are the council members with the second longest current continuous membership on the City Council without serving as Mayor [see Section 2.08.160(b)(2)], even though that membership may have been for mere minutes. Again, Council

Members Mullany and Hanson have been on the council longer, but both have served as Mayor. And while (b)(5) says Council Members-Elect Mertens and Peabody may not be appointed as Mayor, it does not indicate that they may not be selected as Mayor Pro Tem. The Ordinance discusses the positions of Mayor and Mayor Pro Tem numerous times, sometimes jointly and sometimes singly; had the intent been to include the position of Mayor Pro Tem in the prohibition of (b)(5), the subsection would have so indicated. As between Council Members-Elect Mertens and Peabody, who qualify equally since both were elected in the November election, (b)(4) provides that the council member who received the most votes shall be appointed as Mayor Pro Tem. Council Member-Elect Mertens received more votes than Council Member-Elect Peabody.

2. Does the person seated as Mayor Pro Tempore during calendar year 2013 automatically have priority to become Mayor for calendar year 2014?

Yes. First, by definition under Section 2.08.160(b)(1) and (b)(2): the council member with the longest continuous membership without service as Mayor ("the First") is to be appointed as Mayor and the member with the second longest continuous membership without service as Mayor ("the Second") is to be appointed Mayor Pro Tem; once the First has been Mayor, the Second automatically becomes the member with the longest membership without being Mayor (since the First has now been Mayor). Second, (b)(7) provides that if the position of Mayor becomes vacant due to the inability to fulfill the responsibilities of that position, the Mayor Pro Tem shall be appointed to finish out the term and then shall be reappointed as Mayor for the next full term. If there is no priority for the Mayor Pro Tem to become the Mayor, then there is no logical reason for (b)(7) to specify a subsequent automatic full term as Mayor. Finally, the purpose of the Ordinance is to provide an automatic rotation into the positions of Mayor and Mayor Pro Tem; the only mechanism the Ordinance establishes is the qualifications for Mayor and Mayor Pro Tem. There is no "rotation" unless council members move from member to Mayor Pro Tem to Mayor and back to member.

3. If all five Council Members remain on the Council after the next general municipal election in 2014, what is the order of rotation of each of those specific Council Members (by name)?

Starting in calendar year 2015 the order of rotation would be 1) Council Member Peabody; 2) Council Member Mullany; 3) Council Member Hanson; 4) Council Member Roche; and 5) Council Member Mertens. Since Council Member Roche will be Mayor in 2013 and then Council Member Mertens will be Mayor in 2014, they would go to the end of the rotation. That would make then Council Member Peabody the member with the longest current continuous membership without serving as Mayor (and also the only council member to have not yet served as Mayor) and, therefore, he would serve as Mayor (after having served as Mayor Pro Tem in 2014). As between Council Members Mullany and Hanson, Council Member Mullany has both been on the Council longer and was Mayor earlier than Council Member Hanson, so Council Member Mullany would have priority.

4. If there is one new Council Member based on the 2014 general municipal election, and the other Council Members remain the same, where is the new Council Member placed in the automatic rotation (please provide resulting rotation list using known names)?

Should there be one new council member, the rotation would be as follows: 1) Council Member Peabody; 2) Council Member-Elect X; 3) Council Member Mullany [if he is still on the Council] or Council Member Hanson [if Council Member Mullany is no longer on the Council]; after Council Member Hanson, then Council Member Roche [if she is still on the Council]; and finally Council Member Mertens. The new council member moves into the second position of the rotation because he/she would have the second longest current continuous membership (again though that membership may have been for mere minutes) without serving as Mayor; Council Member-Elect X would become the Mayor Pro Tem.

5. If there are two new Council Members based on the 2014 general municipal election, and the other Council Members remain the same, where are the two new Council Members placed in the automatic rotation (please provide resulting rotation list using known names)?

Should there be two new council members, the rotation would be as follows: 1) Council Member Peabody; 2) Council Member-Elect X or Y, whoever received more votes in the election [Section 2.08.160(b)(4)]; 3) Council Member-Elect X or Y, whoever received less votes in the election; 4) Council Member Hanson; and 5) Council Member Mertens. Council Members-Elect X and Y move into the second and third positions because, as indicated above, they would have the second longest memberships without serving as Mayor.

6. In the event the named individual determined by the retired judge to serve as Mayor for calendar year 2013 leaves office mid-term for any reason, which named individual would then become Mayor for the remainder of calendar year 2013?

Council Member Mullany. Should Mayor Roche leave office mid-term, under Section 2.08.160(b)(7) the Mayor Pro Tem would be appointed to finish the term. In this scenario, however, the Mayor Pro Tem is Council Member-Elect Mertens, who would not have completed at least one year of his current term on the Council. Unless all other council members who have been on the Council for over a year are ineligible under Section 2.08.160(c) (which I have assumed is not the case for purposes of this opinion), (b)(5) makes Council Member-Elect Mertens ineligible to assume the position of Mayor mid-term. For the same reason, Council Member-Elect Peabody, the next council member in the rotation, would be ineligible to become Mayor mid-term. The first eligible council member in the rotation would be Council Member Mullany, who has priority over the only other eligible council member, Council Member Hanson, due to length of membership and time since service as Mayor.

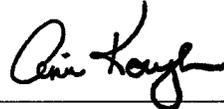
Although not specifically asked, should Council Member Roche leave office mid-term and Council Member Mullany replace her, Council Member Mullany would finish out the term but would not then become Mayor for the next full term, since he would not have assumed the office of Mayor under (b)(7). The rotation would simply continue as if Council Member Roche had completed her term as Mayor, with Mayor Pro Tem Mertens assuming the office of Mayor and

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Council Member Peabody assuming the office of Mayor Pro Tem. Council Member Mullany would retain his position in the rotation after Council Member Peabody.

In rendering this opinion, I found the actual language of the Ordinance, giving the words their ordinary, everyday meaning, to be without ambiguity or uncertainty. Thus the language of the Ordinance controls and no reference to its legislative history was necessary to discern its meaning.

Dated: November 26, 2012



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Hon. Ann Kough, (Ret.)

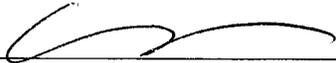
**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: City of Indian Wells  
Reference No. 1220045372

I, Sarah J Siemens, not a party to the within action, hereby declare that on November 26, 2012 I served the attached OPINION ON THE MAYORAL ROTATION ORDINANCE on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Mr. Roderick J. Wood  
Ms. Jeanette Lucas  
City of Indian Wells  
44-950 El Dorado Drive  
Indian Wells, CA 92210  
NOT AVAILABLE  
jlucas@indianwells.com  
Parties Represented:  
City of Indian Wells

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on November 26, 2012.

  
\_\_\_\_\_  
Sarah J Siemens  
ssiemens@jamsadr.com

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**Indian Wells City Council**

**Staff Report – Finance**

**February 6, 2014**

*\* Strategic Planning Session  
& then Staff to bring back at  
2-20-12 CC mtg.*

**Approve Agreement with Vacation Rental Compliance for  
Short-Term Vacation Rental Compliance Program**

**RECOMMENDATIONS:**

City Council **APPROVES** the agreement with Vacation Rental Compliance for the development and management of short-term vacation rental compliance program; and

**AUTHORIZES** and **DIRECTS** the City Manager to execute agreement; and

**AUTHORIZES** and **DIRECTS** staff to prepare a requisition in the amount not to exceed \$12,000 for Fiscal Year 2013-14.

**DISCUSSION:**

Background:

Short-term rental homes are becoming more popular due to the downturn of the economy and the popularity and ease of using the internet as an advertising tool. Listing services like Vacation Rental by Owner (VRBO) and VacationRentals.com attract budget minded travelers searching for a unique "one of a kind" vacation experience. Vacation rentals generally offer additional space for less cost per night versus the typical hotel room and offer amenities such as washers and dryers, full kitchens, DVD players, hot tubs, billiards, video gaming, and even private pools.

The City's short term transient occupancy tax collection for vacation rentals has been established as a self-reporting program. Staff has performed three separate spot checks in the months of November 2013 through January 2014 and observed as many as 126 vacation rentals on VRBO that the City is not collecting transient occupancy tax for. Many of the rental owners or more often management firms are simply unaware of City's requirement of the collection and remittance of transient occupancy tax.

### Analysis:

To gain both tax collection and code compliance, the City needs to allocate additional resources to develop and implement a short-term vacation rental program. Staff contacted a number of local cities to better understand how to develop the program and how to effectively manage it. Staff learned many of the cities chose to acquire the services of Vacation Rental Compliance (VRC) as the most effective means to manage the program. VRC specializes in the development and implementation of short-term vacation rental programs offering services for municipal partners actively seeking new or enhanced revenue streams. These short-term vacation rental programs are targeted for resort and tourist-driven communities, where transit occupancy tax is a main source of revenue for local governments. VRC is a proven partner providing similar services to the following local cities:

- Rancho Mirage
- Palm Desert
- La Quinta
- Indio
- Cathedral City
- Desert Hot Springs
- Palm Springs

While all cities reported favorable transient occupancy tax collections many cities like Palm Desert and Cathedral City were actually more appreciative in the reduction of code compliance violations and the reduction of citizen complaints sometimes associated with short term rentals. Both cities credited implementation of the program as the chief cause for the reductions. The City of Indian Wells has had its own share of code compliance violations and citizen complaints associated with short term rentals. Reductions in these areas serve to promote happier neighborhoods and a better community.

### **FISCAL IMPACT:**

VRC provided the City a brief analysis given the average number of short term vacation rentals available, anticipated average rental rate and the City's 11.25% transient occupancy tax rate in their analysis.

#### Remainder of Fiscal Year 2013/14 (February to June)

If the program is launched in February 2014, registration would begin in March 2014. VRC anticipates the City would collect an estimated \$20,000 in additional transient occupancy taxes for the remainder of the fiscal year. During this period, initial program startup costs will be higher than normal in order to establish the program. VRC provides its services at an hourly rate of \$60 per hour and has estimated 40 hours per month for February through June (200 hours) totaling \$12,000. Net revenue to the City

will be approximately \$8,000. VRC provides a full turnkey operation from signing up participants, ensuring collection, to monthly monitoring, monthly reporting and more. The scope of work focuses on the compliance, registration, and collection of transient occupancy tax. The process includes:

- Development of policy and procedures for registration and compliance
- Identification of properties
- Development of forms and permits
- Communication outreach
- Ordinance compliance
- Transit occupancy tax collection

Fiscal Year 2014/15

Once the program is established the City should expect between \$90,000 and \$120,000 in additional transient occupancy taxes. Program costs with VRC should stabilize to approximately \$28,800 annually. Net revenue to the City will be approximately \$61,200 to \$91,200 annually.

The Finance Committee met twice to review the proposal from VRC and has approved the proposal for City Council consideration. The Finance Committee has asked for a quarterly review of the program during their regularly scheduled Finance Committee meetings.

**ATTACHMENT:**

1. VRC proposal and background information



## ***Proposal***

***City of Indian Wells  
November 26, 2013***

Vacation Rental Compliance is offering the City of Indian Wells the following proposal for contract services to develop and sustain a new short-term vacation rental compliance program and transient and occupancy collection process.

### **Methodology**

The Vacation Rental Compliance Program is a multi-year program that is built on a methodology based on best practices that have been continuously perfected through experience gained and implemented by several Coachella Valley cities. The process includes:

- Development of a Short-term Vacation Rental Ordinance
- Policy and Procedures for Registration and Compliance
- Identification of Properties
- Development of Forms and Permits
- Communication Outreach
- Ordinance Compliance
- TOT collection

### **Key Benefits to the City of Indian Wells include:**

- Good-Neighbor Rental Guidelines to preserve the integrity of neighborhoods
- Annual Growth in TOT Revenues
- Opportunity to realize Additional Business License Revenues

### **Scope of Work**

The scope of work will focus on the compliance, registration, and collection of Transient Occupancy Tax. The steps for this process are outlined as follows:

1. Identify the properties and rental agencies that are operating in the City of Indian Wells.
2. Contact the identified properties and rental agencies for registration of all rental properties.
  - Each individual property renting "by owner" must apply for a business license with the city
  - Each rental agency must provide a list of all properties they currently rent short-term

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## **Strategic Goal – New Revenue Generation**

### **Goal: Collection of Transient Occupancy Tax on Short term rentals Per City Ordinance 653**

**Current Analysis:** TOT collection on short term is self-reporting. Staff has observed as many as 124 vacation rentals on VRBO available of the Thanksgiving Holiday 2013 in which the City is not collecting TOT tax.

**Solution:** Acquire the services of Vacation Rental Compliance LLC. Vacation Rental Compliance LLC provides a full turnkey operation from signing up participants, ensuring collection, to monthly monitoring, monthly reporting and more. Vacation Rental Compliance is a proven partner providing similar services to the following cities:

- Rancho Mirage
- Palm Desert
- La Quinta
- Indio
- Cathedral City
- Desert Hot Springs
- Palm Springs

**Anticipated Revenue Increase:** Given the average number of vacation rentals available, the current average rental rate, and current TOT tax rate, the City should net approximately \$61,000 to \$90,000 annually after fees. This estimate is likely to expand fairly quickly as initial compliance work begins.

***Vacation Rental Compliance LLC*** specializes in the development and implementation of Short-Term Vacation Rental Programs. Our program offerings provide valuable opportunities for our municipal partners who are actively seeking new or enhanced revenue streams.

Our programs are targeted for resort and tourist-driven communities, where Transit Occupancy Tax (TOT) is a main source of revenue for local governments.

Short-term rental homes are becoming more popular due to the downturn of the economy and the popularity and ease of using the internet as an advertising tool. Many of these rental owners are unaware of City/County Ordinances that require the collection and remittance of TOT.



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## Home

### *Vacation Rental Compliance*

*Bridging Community & Compliance*

*Vacation Rental Compliance LLC* specializes in the development and implementation of Short-Term Vacation Rental Programs. Our program offerings provide valuable opportunities for our municipal partners who are actively seeking new or enhanced revenue streams.

Our programs are targeted for resort and tourist-driven communities, where Transit Occupancy Tax (TOT) is a main source of revenue for local governments.

Short-term rental homes are becoming more popular due to the downturn of the economy and the popularity and ease of using the internet as an advertising tool. Many of these rental owners are unaware of City/County Ordinances that require the collection and remittance of TOT.

*Vacation Rental Compliance* works with its municipal partners to identify, educate and register these owners, administering compliance; while safeguarding the integrity of their communities.

#### Our Mission

To work with Municipalities to develop sustainable, Short-Term Vacation Rental Programs that result in increased revenues and compliance for cities and counties; while protecting the rights and preserving the integrity of the communities they serve.

Contact Us Today!

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### *Vacation Rental Compliance Current Client Information*

#### **City of Rancho Mirage:**

- TOT Tax rate is 10% on any rentals under 28 days
- Annual registration is \$100 per property, and additional \$31 business license fee if the property is not rented through a rental agency.
- Link to City website for additional information:  
[City of Rancho Mirage](#)

#### **City of Palm Desert:**

- TOT Tax rate is 9% on any rentals under 27 days.
- Annual registration is \$26 per property no additional fees.
- If you are a rental agency you need to have a property management business license.
- Link to City website for additional information:  
[City of Palm Desert](#)

#### **City of La Quinta:**

- TOT Tax rate is 10% on any rentals under 30 days.
- Annual registration is \$25 per property and an additional business license is required if the property is not rented through a rental agency.
- Link to City Website for additional information:  
[City of La Quinta](#)

#### **City of Indio:**

- TOT Tax rate is 10% on any rental under 30 days.
- Annual registration is \$60 per property and an additional business license is required if the property is not rental through a rental agency.

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- All long-term rentals (30 days or more) must apply for a business license in the City of Indio.
- Link to City Website for additional information:  
[City of Indio](#)

**City of Cathedral City:**

- TOT Tax rate is 12% on any rental under 30 days.
- Annual registration is \$60 per property and an additional business license is required on all properties.
- All long-term rentals (30 days or more) must also apply for a business license in the City of Cathedral City.
- Link to City Website for additional information:  
[City of Cathedral City](#)

**City of Desert Hot Springs:**

- TOT Tax rate is 12% on any rental under 28 days.
- Annual registration to be announced
- Link to City Website TBA

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## *Vacation Rental Compliance*

*Bridging Community with Compliance*

### *Our Business*

*Vacation Rental Compliance LLC* is a small business, offering contract services to local municipalities who wish to increase Transit Occupancy Tax (TOT) revenues, through the development of a Short-Term Vacation Rental Program.

Located in Rancho Mirage, the heart of the Coachella Valley, our Company specializes in helping our municipal partners implement and administer Short-Term Vacation Rental Programs.

Our initial concentration for clients has been within the Coachella Valley, where our municipal partners include the Cities of Rancho Mirage, Palm Desert, La Quinta, Indio, Cathedral City, and the City of Desert Hot Springs.

Company efforts are currently underway to expand our market to other municipalities - especially those in California who are experiencing revenue loss due to the elimination of Redevelopment Agency funding.

### *Who We Are*

*Vacation Rental Compliance LLC* is a California-based company, owned and operated by Cindy Gosselin, President and CEO.

As a former employee of the City of Palm Springs, Cindy was assigned the task to develop the City's first Short-Term Vacation Rental registration program. Over the four years of her employment with the City, she registered over 550 homes. The program is currently generating an additional \$600,000 a

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year in Transit Occupancy Tax revenue.

Cindy has worked on contract for other cities for the past year, helping them initiate and administer their Short-Term Vacation Rental Programs.

Due to the overwhelming demand for her services from other municipalities in this specialized field, she launched *Vacation Rental Compliance LLC*.

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CO/HA ACTION \_\_\_\_\_ MTG. DATE: 2-6-14  
APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ REC/FILE \_\_\_\_\_ CONT. \_\_\_\_\_  
OTHER \_\_\_\_\_  
VOTE: YES \_\_\_\_\_ NO \_\_\_\_\_ ABSTAIN \_\_\_\_\_

# Indian Wells City Council

*Council added following to discussion list:*  
**February 6, 2014**

## Staff Report – Finance

- (1) Reserve Policy Review
- (2) Long-Term Liabilities Plan and
- (3) Vacation Rentals

### 2014-15 Strategic Planning Update: Financial Condition

#### RECOMMENDATIONS:

City Council takes **PUBLIC INPUT** as to Fiscal Year 2014-15 Financial Condition update; and

**RECEIVES** and **FILES** this report; and

provides **DIRECTION** to staff as to any modifications to the City Council Discussion Issues List for the February workshops.

#### REPORT IN BRIEF:

The elimination of redevelopment caused the City to make significant changes to the City's budget and long-term capital plans. In response to the elimination of redevelopment, the City has explored and captured new revenue opportunities, reduced operating costs, and established capital replacement reserve funds with annual funding requirements.

Dating back to 1986, redevelopment has paid for nearly all of the City's capital assets and infrastructure costs; with the loss of redevelopment this is no longer the case, and the City needs a new funding source for long-term capital replacements. To better understand the City's long-term capital needs, Staff conducted an assessment of all of the City's assets. Using CalTrans standards, Staff calculated the annual contribution that would be necessary to maintain the City's capital infrastructure to be \$2,765,785. The City's solution to the loss of the funding source for capital replacements was to create a long-term "sinking" fund, where interest income and contributions would make up \$952,103 of the annual contribution. Staff anticipates the fiscal year 2013/14 shortfall to be -\$1,813,682. During strategic planning, City Council should address opportunities to reduce the capital shortfall by expanding the City's current reserve policy.

12. There has probably been an increase in tax revenues during the past three years related to the improving economy, and it would seem that the focus of VRC would be to find the property owners who had not previously been paying short-term taxes for their rental properties, so how many new property owners began to pay the short-term taxes in Palm Desert, Rancho Mirage, etc., after VRC was retained by those cities?

13. Has anyone considered a split compensation model (e.g., the company gets \$6,000 guaranteed and can earn \$6,000 in commissions if they are successful in collecting that extra \$20,000 revenue they claim they can collect)?

Those are just my initial questions. I'm sure other residents and council members will have other and better questions for this proposal.

My second set of comments relate to the proposal to draft a ballot measure to change the mayoral rotation; i.e., agenda item 7A. According to the memo on page 118 of the agenda for this week's council meeting, this is a proposal from Doug Hanson, and under this proposal, if the voters agree, a newly elected council member would not be eligible to become mayor pro tem, but would have to wait at least one year. Thus, if that proposal had been in effect in December 2012, Ted Mertens would not have been eligible to be mayor pro tem, and he would not be mayor this year.

My understanding is that two new council members could be elected this year in November (if the current incumbents do not run or are not reelected). It is also my understanding that under the current procedures (approved by the voters two years ago), if two new council members are elected in November, one of them will become the mayor pro tem, and the second would become the mayor pro tem the following year. Under that scenario, Doug Hanson would finish his second term without becoming the mayor for a second time. However, if Doug Hanson's proposal is passed by the council and adopted by the voters, Hanson could become mayor pro tem in December 2014, and mayor in December 2015. Thus, at first glance, Doug Hanson's proposal seems designed specifically to benefit Doug Hanson. That is not illegal, but if my understanding of the law is correct, I believe that the council should inform the residents, during the debate on Thursday, that the proposal by Doug Hanson would enable him to become mayor, but that without that change, he will not become mayor for a second time.

My opinion two years ago (when the voters enacted the current mayoral rotation) was that new council members did not need a year of experience to become mayor or mayor pro tem (because our city is primarily run by a City Manager and much larger cities that do not have city managers -- like Los Angeles and New York -- allow newly elected mayors to run their cities without any requirement for one year of experience). My opinion has not changed, and Ted Mertens has not done anything to make me believe he was not qualified to be mayor pro tem during his first year in office. However, if the council (including Ted Mertens) truly believes this change is necessary, then the residents will decide whether to allow Mr. Hanson to become mayor one

more time. I just want to make sure that before the council votes on Mr. Hanson's proposal, the residents are told how he might benefit from this proposed change.

Thank you for considering my comments, and because I'll be out of town on Thursday, I would ask that these comments be read into the record during the discussion periods for each of these agenda items.

Thank you,  
Dana Cephas

Mayor, Mayor Pro Tem, Council Members,

On February 16, 2012 the council started the process of preparing ordinance 666 "Annual Rotation of Mayor and Mayor Pro Tem" for the November 6, 2012 ballot. Nine months earlier in May 2011 the voters of Indian Wells were so fed up with the then council's misuse and abuse of the Mayor and Mayor Pro Tem selection process that they started a petition for a ballot initiative on the subject.

The residents/voters formed a committee and reached a consensus that our ballot measure would be simple and straight forward and that it would be a charter amendment that council members could not change without voter approval. Most importantly the automatic annual rotation would be based on seniority in an effort to allow all council members the opportunity to serve as Mayor and Mayor Pro Tem during their term. There were no prohibitions, all council members were equal.

During this period the residents kept this issue front and center. Council Members Hanson and Powers suggested that the council relieve the voters of the arduous task of gathering signatures in the summer heat, and that the city council should put the issue on the ballot.

They did, and Ordinance 666 as written received approximately 72% of the vote. The committee members generally agreed with the council version, with the exception of b. (5) of the ordinance, which prohibits a newly elected council member from being eligible to be Mayor until he has served one year on the council.

This brings us to Council Member Hanson's request today that we extend the one year prohibition to include the Mayor Pro Tem.

Why??? Newly elected council members are duly elected by the same voters that elected the current sitting council members, and their vote is equal to the votes cast for the prior elected council members. When the voters voted for their candidate they were not voting that he should serve an apprenticeship and therefore be treated differently and deprived of privileges that the sitting council members receive. This type of discriminatory policy was put in effect by self serving council members protecting their turf and it's tantamount to usurping the will of the voter.

Former Mayor Hanson is the only sitting council member who could benefit from this expensive and contentious request. If this issue is put on the ballot and approved, Mr. Hanson would be Mayor Pro Tem in December 2014 and Mayor in 2015. Under the current ordinance Former Mayor Hanson will not be eligible to be Mayor again during his current term.

A little over a year ago this ordinance was on the ballot and was approved by approximately 72% of the voters. I personally would like to see the current Mayoral prohibition removed, but the people have spoken loud and clear on this issue, and I accept and respect the people's decision and so should Council Member Hanson.

Andy Elchuck

CO/HA ACTION \_\_\_\_\_ MTG. DATE: 2-6-14  
APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ REC/FILE \_\_\_\_\_ CONT. \_\_\_\_\_  
OTHER \_\_\_\_\_  
VOTE: YES \_\_\_\_\_ NO \_\_\_\_\_ ABSTAIN \_\_\_\_\_

# Indian Wells City Council

*Council added following to discussion list:*  
**February 6, 2014**

## Staff Report – Finance

- (1) Reserve Policy Review
- (2) Long-Term Liabilities Plan and
- (3) Vacation Rentals

### 2014-15 Strategic Planning Update: Financial Condition

#### RECOMMENDATIONS:

City Council takes **PUBLIC INPUT** as to Fiscal Year 2014-15 Financial Condition update; and

**RECEIVES** and **FILES** this report; and

provides **DIRECTION** to staff as to any modifications to the City Council Discussion Issues List for the February workshops.

#### REPORT IN BRIEF:

The elimination of redevelopment caused the City to make significant changes to the City's budget and long-term capital plans. In response to the elimination of redevelopment, the City has explored and captured new revenue opportunities, reduced operating costs, and established capital replacement reserve funds with annual funding requirements.

Dating back to 1986, redevelopment has paid for nearly all of the City's capital assets and infrastructure costs; with the loss of redevelopment this is no longer the case, and the City needs a new funding source for long-term capital replacements. To better understand the City's long-term capital needs, Staff conducted an assessment of all of the City's assets. Using CalTrans standards, Staff calculated the annual contribution that would be necessary to maintain the City's capital infrastructure to be \$2,765,785. The City's solution to the loss of the funding source for capital replacements was to create a long-term "sinking" fund, where interest income and contributions would make up \$952,103 of the annual contribution. Staff anticipates the fiscal year 2013/14 shortfall to be -\$1,813,682. During strategic planning, City Council should address opportunities to reduce the capital shortfall by expanding the City's current reserve policy.

## **DISCUSSION:**

The City Council is committed to the City's financial sustainability. As a fiscally responsible city, Indian Wells is continually seeking viable revenue opportunities and employ practical cost saving measures to safeguard the City's assets while enhancing the quality of life of the residents living in Indian Wells. The City's goal is to manage financial resources to ensure economic vitality and to sustain quality public services.

The City's fiscal health stems from an application of sound fiscal practices. Through active contract management the City Council has been able to provide quality community services, while maintaining an effective level of spending. The City's Finance Committee oversees the fiscal policies of the City and ensures fiscal responsibility. The Budget is the most important policy document the City produces on a regular basis. The program and financial decisions it embodies must reflect the will of the community through the policy direction of the City Council. This can only be achieved through a development process that encourages communication and transparency seeking input from a diverse cross-section of the community.

### **Local Economy**

According to the Coachella Valley Economic Partnership 2013 Economic Report prepared by economist John E. Husing, Ph.D., the Coachella Valley's economy is clearly on the mend with positive indicators coming from each of the five sectors primarily responsible for its economic health: tourism, health care, agriculture, retail trade and housing.

Tourism has been a major staple of the region and had a strong season in 2012-13. Health care has increased throughout the recession with growth continuing into 2013, and Obama-care will potentially drive a major health care job expansion in the near future. Agricultural production reached a new record level in 2012. Retail trade grew 6.7% in the first quarter of 2013 after increasing 4.7% in all of 2012 and 9.4% in 2011. The housing sector, which drove growth in the area's economy from 2000-2007, has seen prices soar in 2013 and permit recordings undergoing a significant increase.

Coachella Valley tourism is on its way back. In part this is because the U.S. economy is slowing gaining strength having added 6,813,000 jobs through August 2013, or 78.0% of those 8,779,000 lost in the Great Recession. Growth has been continuous but slow, up 136,133 in August 2013. An improving American economy is important to the Coachella Valley as national tourism is a major driver for it:

- According to the Greater Palm Springs Convention & Visitors Bureau, the average daily hotel room rate was \$133.36 for the first 8 months of 2013. That was up 5.5% from that period of 2012 and exceeded the prior record for the period of \$132.20 from 2008. For the 2013 period, average occupancy was 60.8% highest since 63.6% in 2007.

- Passenger traffic at Palm Springs International Airport has continued growing in 2013. Volume was up 2.2% through July 2013 and was headed for a record 1,765,482. It had soared 14.3% in 2012 and is holding those gains.
- Car rentals related to the airport rose 14.4% in 2012. They are headed for a gain of 6.4% in 2013 or another record at an estimated \$5.8 million.
- After growing slowly in 2012 (600 jobs), January-June 2013 employment data showed the Inland Empire's art, entertainment and recreation sectors adding 2,133 jobs or 13.0% over that period of 2012. In addition, the inland areas' January-June 2013 accommodation and food service employment was up 5,917 jobs over 2012 (6.0%).

In 2013, the Coachella Valley continues to see a mixed picture in the housing sector. By second quarter 2013, 49% of Riverside County's families were able to afford the bottom 50% of its houses. This affordability rate was 65% a year ago. This picture exists because 30 year fixed interest rate in September 2013 was 4.49%, up from 3.47% a year ago. Simultaneously, Riverside County's median home price was up 26.1% from September 2012-2013.

### **Long-Term Cash Flow Analysis and Financial Plans**

The City utilizes long-term cash flow analysis to project current and future revenues and expenditures resulting from operations and capital improvements. Much of the City's capital improvement program is grounded upon the available resources determined by this analysis. The City's long-term plan establishes assumptions for revenues, expenditures, and changes in fund balance over a five year period. The assumptions will be evaluated every year as part of the budget process.

Each year, the City updates the citywide cash flows (revenues, expenditures, and estimated fund balance) for the next five years. Projections include annual expected growth, commercial and residential development, economic indicators, the tourism economy, expanding public services, and estimated maintenance and operating costs of future capital improvements. This data is presented to the City Council and the residents in a form that will facilitate budget discussions based on a multi-year strategic planning perspective.

### **Budgeting and Estimating for Annual Capital Repair and Maintenance**

Capital Outlay Funds are used exclusively for the real property acquisition, and construction and completion of permanent public improvements; replacement or reconstruction of public facilities; and other improvements of a permanent character. Ongoing repairs and maintenance of capital improvements expenditures are reflected in the City's operating budget not from the Capital Outlay Funds.

## **Strategic Planning and Community Outreach**

January 25 and January 28, 2013 – Council Strategic Planning

City Council held two public workshops to discuss key issues and prioritize goals and project lists. This process is fundamental to budget development and the success of ongoing operations.

March 2013 through April 2013 – Development of the Budget

Staff prepares a draft form of the budget incorporating the ideals, goals, and projects established by the City Council and the Community during Strategic Planning. The Finance Committee meets several times with Staff to review and discuss a draft form of budget consistent with the Strategic Plan.

May 16, 2013 - Budget Study Session

City Council met with community members at large to review and discuss the fiscal year 2013/14 and fiscal year 2014/15 citywide operating and capital budget. The City Council took public testimony throughout the study session to consider all of the issues. The new biennial budget presented by Staff was balanced and did not contemplate the use of reserve funds for on-going operations or capital development. During study session, the City Council amended the proposed budget by modifying the City's community assistance program which reduced overall expenses by \$62,455.

June 6, 2013 – Adoption of the Fiscal Year 2013/14 and Fiscal Year 2014/15 Citywide Operating and Capital Budget

Council adopted the budget for fiscal years 2013/14-2014/15. The budget was designed to implement the Council's top priorities of sustaining quality public services and achieving long term financial sustainability.

### **General Fund Operating Budget Report**

The expansion of the tennis stadium will provide the City with new revenue growth and increased tourism. The City's hotel partners are beginning to project modest growth and County Officials anticipate an increase in property taxes. City expenditures have been kept in check overall by implementing cost management practices.

## **General Fund Revenues**

The General Fund revenue section provides a detailed description of the revenue categories including background information describing methods of allocation, growth trends, and economic factors affecting the revenue source. This information provides insight into the formulation of the fiscal year 2013/14 year end estimates and the fiscal year 2014/15 General Fund revenue projections. Total General Fund revenues are anticipated to be \$14,747,355 at the end of fiscal year 2013/14.

The General Fund revenue projections for the fiscal year 2014/15 budget are conservative estimates based upon current economic conditions. Budgetary modifications are subject to approval by the City Council. Changes in the local, State, and national economic environments can impact each of the revenue sources and their possible effects on the City's finances. Other General Fund revenue sources are influenced by these same conditions and various other non-economic events, such as a change in an existing fee or the implementation of a new policy in an existing program.

## **Property Tax Revenue**

The City currently receives approximately 15.1% of its General Fund revenues from property taxes. Under current law, all taxable real and personal property is subject to a tax rate of one percent of the value. In June 1986, California voters approved a Constitutional Amendment, which provides for an exception to the 1% limitations. The Amendment allows local governments and school districts to raise property taxes above one percent to finance general obligation bond sales. A tax increase can only occur if two-thirds of those voting in a local election approve the issuance of bonds.

The assessed value of real property that has not changed ownership increases by the change in the California Price Index or a maximum of 2% per year. Property which changes ownership, property which is substantially altered, newly-constructed property, state-assessed property, and personal property are assessed at the full market value in the first year and subject to the 2% cap thereafter.

## **A No/Low Tax City**

Prior to the passage of Proposition 13, local governments were authorized to levy individual property tax rates. The total tax rate applicable to any individual parcel was the total of the separate rates levied by each local taxing jurisdiction serving that property, i.e. county, city, special districts, school districts, community college, Office of Education. Proposition 13 limited the tax rate for each individual piece of property to 1% of the assessed valuation of the property according to the most recent sale of the property.

The City of Indian Wells is one of few cities in the State of California that is categorized as No/Low property tax city because the City did not have an established property tax rate prior to the adoption of Proposition 13. Cities without an established tax rate were placed into a minimum tax rate formula which over time has increased from 1% of the 1% of the assessed valuation to a maximum of 7% of the 1% of the assessed valuation.

No/Low commonly known as the TEA formula (Tax Equity Allocation) is more of a method than a simple formula. The TEA formula is calculated using the County's Statement of Original Charge for the City of Indian Wells which includes the local secured rolls, SBE, Unsecured rolls, and Homeowner's relief roll. The calculation is complex in and of itself because of the multiple tax rate areas (TRAs) in Indian Wells each calculated differently. Once fully calculated, Indian Wells actually receives only about \$0.05 cents for every dollar paid to the County of Riverside from Indian Wells property owners.

The State Board of Equalization has notified assessors that the CCPI to be applied to the 2013/14 assessment roll is 2%. State law requires the County Assessor, upon a change in ownership or the completion of new construction, to immediately reappraise property and issue a supplemental assessment reflecting the difference between the prior assessed value and the new assessment. Both of these factors – change in ownership and new construction – are projected to increase, albeit slowly, along with the rest of the housing market thereby increasing this revenue source.

When projecting out future property tax revenues, staff tried to consider the factors that go into assessed value. How will foreclosures affect assessed values and the real estate market? What will annual inflation factors look like? How much new construction and remodeling is anticipated? What will the real estate market look like?

Indian Wells seems to be recovering. During fiscal year 2012/13 and continuing into fiscal year 2013/14, the Planning Department has seen an increase in home remodels and new residential construction has started again. Property taxes should continue to grow moving into fiscal year 2014/15 and a stronger housing market should appear.

Assumptions that went into projected property tax revenues were as follows

- 2013/14 – Assumes a 2% inflation factor based upon State Board of Equalization notification plus a small assessed value adjustment upward accounting for new properties added to the tax rolls, recently sold properties being reassessed, remodeled properties subject to reassessment, and outstanding appeals.
- 2014/15 – Assumes a 2% inflation factor from State Board of Equalization plus an assessed value adjustment upward accounting for new properties added to the tax rolls, recently sold properties being reassessed, remodeled properties subject to reassessment, and outstanding appeals.

- 2015/16-2018/19 – Conservatively assumes a 2% increase for an inflation factor from State Board of Equalization and any changes to assessed value accounting for new properties added to the tax rolls, sold properties being reassessed, remodeled properties subject to reassessment, and outstanding appeals.

Property Tax Trends Table



**Transient Occupancy Tax (TOT)**

The business of Indian Wells is tourism. Transient occupancy tax generates about 44.0% of the expected operating revenues of the General Fund and is the primary funding source for all government services. The City collects transient occupancy tax primarily from four major hotels within the City. Hotel guest are subject to a TOT rate of 11.25% of the hotel rate.

Indian Wells is starting to collect transient occupancy tax from short term rentals as well. The City is currently developing this program and expects implementation in March of 2014. Once fully implemented, the City anticipates collecting between \$100,000 and \$140,000 in new transient occupancy tax annually.

Transient occupancy tax and other tourism related revenues play a vital role in the economic success of the City of Indian Wells. Transient occupancy tax estimates are generated using forecast data gathered from hotel partners. Because this revenue source is so vital to the City, budgetary assumptions are updated on a continuous basis to ensure accuracy.

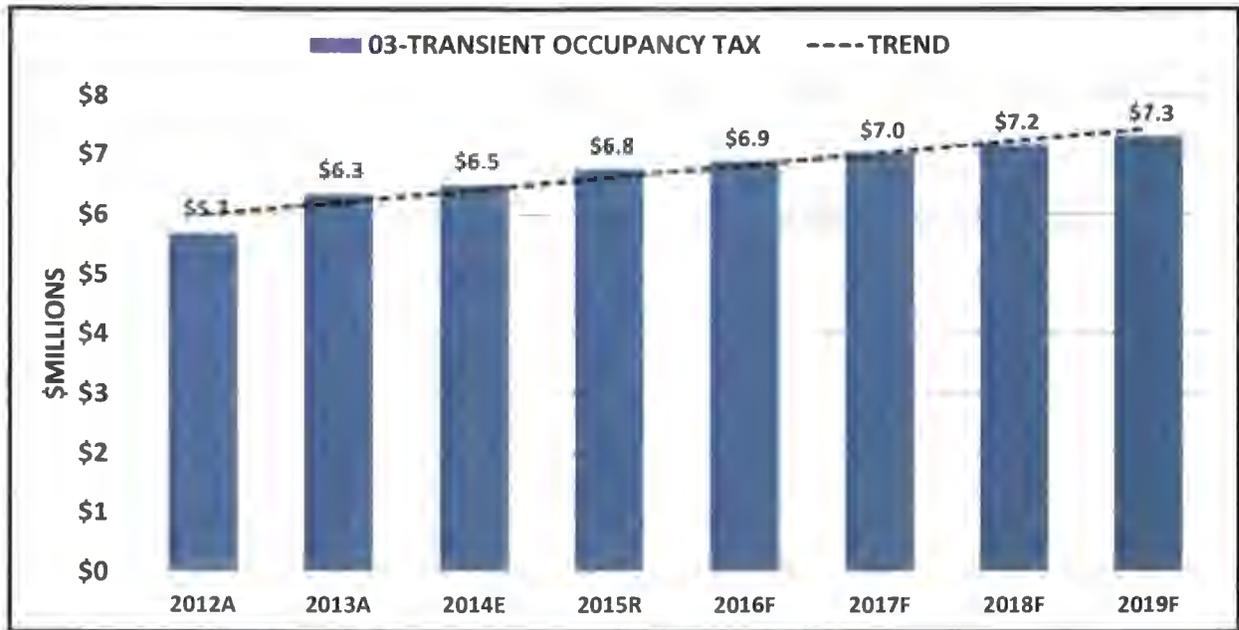
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Assumptions that went into projected transient occupancy tax revenues were as follows:

- 2013/14 – Assumes a 3% increase predicated upon revised forecasts provided by hotel partners during the midyear review and current collections. This represents a 1% decrease from the original forecasts compiled from hotel partners in May of 2013.
- 2014/15 – Assumes a 4% inflation based upon early forecasts provided by hotel partners during the midyear review and data collected during Coachella Valley Economic Partnership 2013 Economic Report prepared by economist John E. Husing, Ph.D.
- 2015/16-2018/19 – Assumes a 2% increase for an inflation factor based upon an expectation of conservative growth.

The transient occupancy tax budget for fiscal year 2013/14 is estimated at \$6,490,513. Current estimates on fiscal year 2014/15 revenues indicate 4.0% growth generating \$6,753,733 in transient occupancy tax revenues.

Transient Occupancy Tax Historical Trends Table



## **Sales Tax**

The City currently receives approximately 7% of its General Fund revenues from sales taxes. Under the California Sales and Use Tax Law, the sale of tangible personal property is subject to sales or use tax unless exempt or otherwise excluded. Sales Tax is an excise tax imposed on retailers for the privilege of selling tangible personal property. Use Tax is an excise tax imposed on a person for the storage, use, or other consumption of tangible personal property purchased from any retailer. The proceeds of sales and use taxes imposed within the boundaries of Indian Wells are distributed by the State to various agencies, with the City receiving seventy-five percent of one percent of the tax (0.75% of the 8.00%).

<b>Rate</b>	<b>Jurisdiction</b>	<b>Purpose</b>	<b>Authority</b>
3.69%	State	Goes to State's General Fund	Revenue and Taxation Code Sections 6051, 6201
0.25%	State	Goes to State's General Fund	Revenue and Taxation Code Sections 6051.3, 6201.3 (Inoperative 1/1/01 – 12/31/01)
0.25%	State	Goes to State's Fiscal Recovery Fund, to pay off Economic Recovery Bonds (2004)	Revenue and Taxation Code Sections 6051.5, 6201.5 (Operative 7/1/04)
0.50%	State	Goes to Local Public Safety Fund to support local criminal justice activities (1993)	Section 35, Article XIII, State Constitution
0.25%	State	Goes to State's Education Protection Account to support school districts, county offices of education, charter schools, and community college districts.	Section 36, Article XIII, State Constitution (Operative 1/1/13 to 12/31/16)
0.50%	State	Goes to Local Revenue Fund to support local health and social services programs (1991 Realignment)	Revenue and Taxation Code Sections 6051.2, 6201.2
1.06%	State	Goes to Local Revenue Fund 2011	Revenue and Taxation Code Sections 6051.15 and 6201.15
1.00%	Local	0.25% Goes to county transportation funds 0.75% Goes to city or county operations	Revenue and Taxation Code Section 7203.1 (Operative 7/1/04)
<b>7.50%</b>	<b>State/Local</b>	<b>Total Statewide Base Sales and Use Tax Rate</b>	
0.50%	Riverside County	District Tax Effective 7/1/1989 Riverside County Transportation Commission (RCTC)	
<b>8.00%</b>		<b>Total Sales &amp; Use Tax Rate</b>	

The collection of sales tax revenues throughout the City has been largely dependent in the occupancy of the hotels and the overall tourism economy. Local residents provide a stable sales tax base; however, increases and decreases in tourism create the overall volatility in the revenue source. The anticipated sales tax revenue for fiscal year 2013/14 is \$978,810. The City is expecting general sales tax revenues to increase 4% moving into fiscal year 2014/15. As additional consumer confidence begins to return to the marketplace, the sales tax revenue will be adjusted accordingly.

Assumptions that went into projected sales tax revenues were as follows:

- 2013/14 – Assumes a 3.5% increase consistent with anticipated increases in tourism and current collections.
- 2014/15 – Assumes a 4% inflation based upon early forecasts provided by hotel partners during the midyear review.
- 2015/16-2018/19 – Assumes a 2% increase for an inflation factor based upon an expectation of conservative growth.

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Sales Tax Trends Table



**Admissions Tax**

The City currently receives approximately 14.3% of its General Fund revenues from admission taxes. On November 8, 2005, the City held a Special Election to amend Section 3.14.020 of the Municipal Code granting authority to the City Council to increase by ordinance or resolution the admissions tax from 5.0% up to a maximum of 10.0% as needed to pay for public services and to offset costs associated with supporting the tennis tournament. The ballot measure passed with 82.0% approval.

The current admissions tax rate is 9.0% for all calendar year 2014 events. Beginning in calendar year 2015 and beyond, the admissions tax rate will increase to 10.0%. The tax is based on compensation paid by the operator of an event, for the right or privilege to enter, occupy, or use a seat or space at any entertainment, amusement or recreational activity for which admission is charged. Admission charges for events by bona fide non-profit organizations are exempt from the tax.

Admissions tax revenues continue to grow due to the success of the BNP Paribas Open held at the Indian Wells Tennis Gardens. The current economy has not slowed the growth of admissions tax revenues which has been rising steadily since 2001. In April 2013, the Indian Wells Tennis Garden has unveiled plans for an expansion targeted for completion by the 2014 BNP Paribas Open. The plan encompasses the construction of a permanent Stadium 2 with 8,000 seats and two restaurants, a marquee site entrance on Washington Street with a new box office, a new 19,000 square foot shade structure, four additional practice courts, expansion of the current Miles Street entrance, valet and

accessible parking, an additional grass parking space for up to 2,000 cars, and expansion and relocation of the TV production compound. The expansion augments the changes the BNP Paribas Open has made in the last few years including becoming the only tournament to have the Hawkeye Challenge System on all match courts.

Expansion of the Indian Wells Tennis Garden will allow for greater attendance. The Indian Wells Tennis Garden is anticipating attendance to grow from 380,000 annually to over 500,000 annually within a few years. Without any change to the average ticket price, the additional 120,000 in attendance will create an additional \$573,600 annually in admissions taxes.

To be conservative, Staff has anticipated attendance will gradually increase to 500,000 annually by the 2016 March tournament. This allows attendance to grow by 40,000 tennis fans for each of the 2014, 2015, and 2016 tournaments. This three year implementation allows Staff to monitor attendance and average ticket prices each year and adjust accordingly.

The recent expansion plans laid out by the Indian Wells Tennis Gardens will continue to drive new revenues into the City for years to come. The City should expect strong revenue growth for the next three fiscal years until admissions tax revenue begin to stabilize in 2016. The fiscal year 2013/14 revenue estimate for Admissions Tax is \$2,007,600 anticipating a 10.5% increase over fiscal year 2012/13 actuals.

Assumptions that went into projected admissions tax revenues were as follows:

- 2013/14 – Assumes a 10.5% increase based upon discussions with tennis partners considering the recent expansion of the Tennis Gardens. Assumes an attendance increase from 380,000 to 420,000. Without any change to the average ticket price, the additional 40,000 in attendance will create an additional \$191,200 annually in admissions taxes.
- 2014/15 – Assumes a 9.5% increase based upon discussions with tennis partners considering the recent expansion of the Tennis Gardens. Assumes an attendance increase from 420,000 to 460,000. Without any change to the average ticket price, the additional 40,000 in attendance will create an additional \$191,200 annually in admissions taxes.
- 2015/16- Assumes an 8.0% increase based upon discussions with tennis partners considering the recent expansion of the Tennis Gardens. Assumes an attendance increase from 460,000 to 500,000. Without any change to the average ticket price, the additional 40,000 in attendance will create an additional \$191,200 annually in admissions taxes.
- 2016/17-2018/19 – Assumes an average of 4.3% increase for an inflation factor based upon an expectation of conservative growth.

## Admissions Tax Trends Table

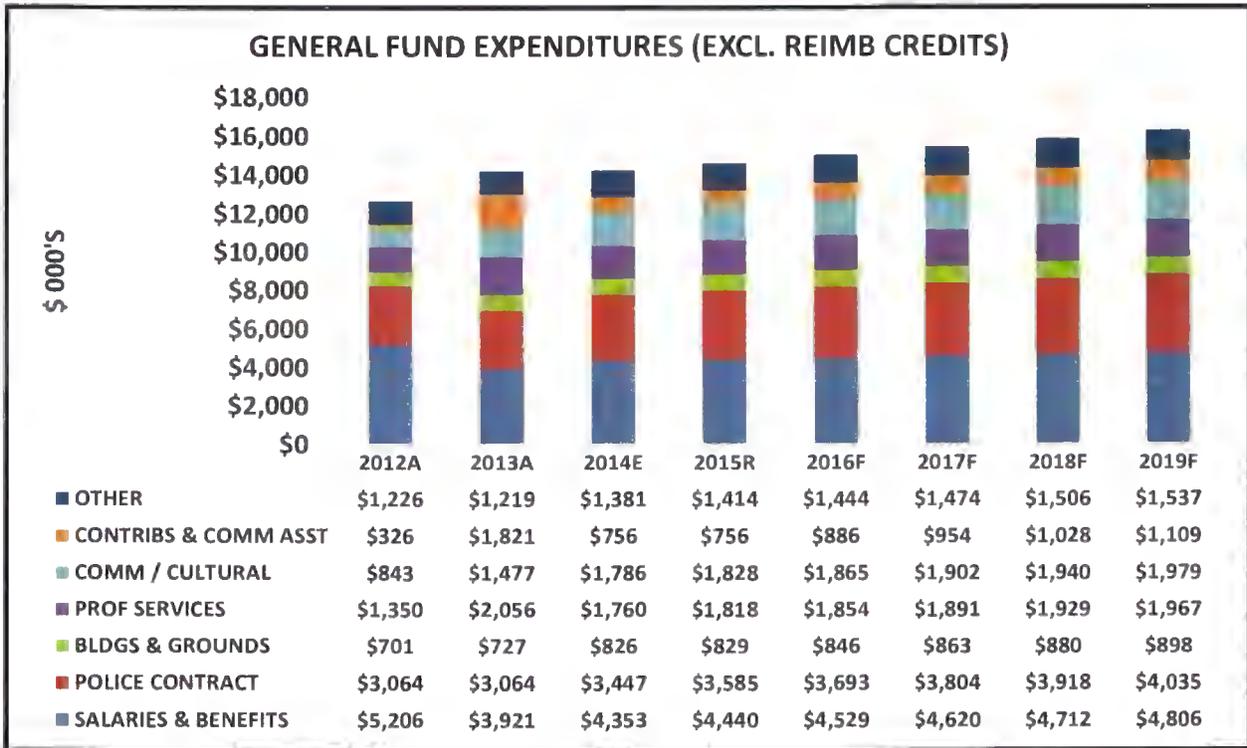


## General Fund Expenditure Projections

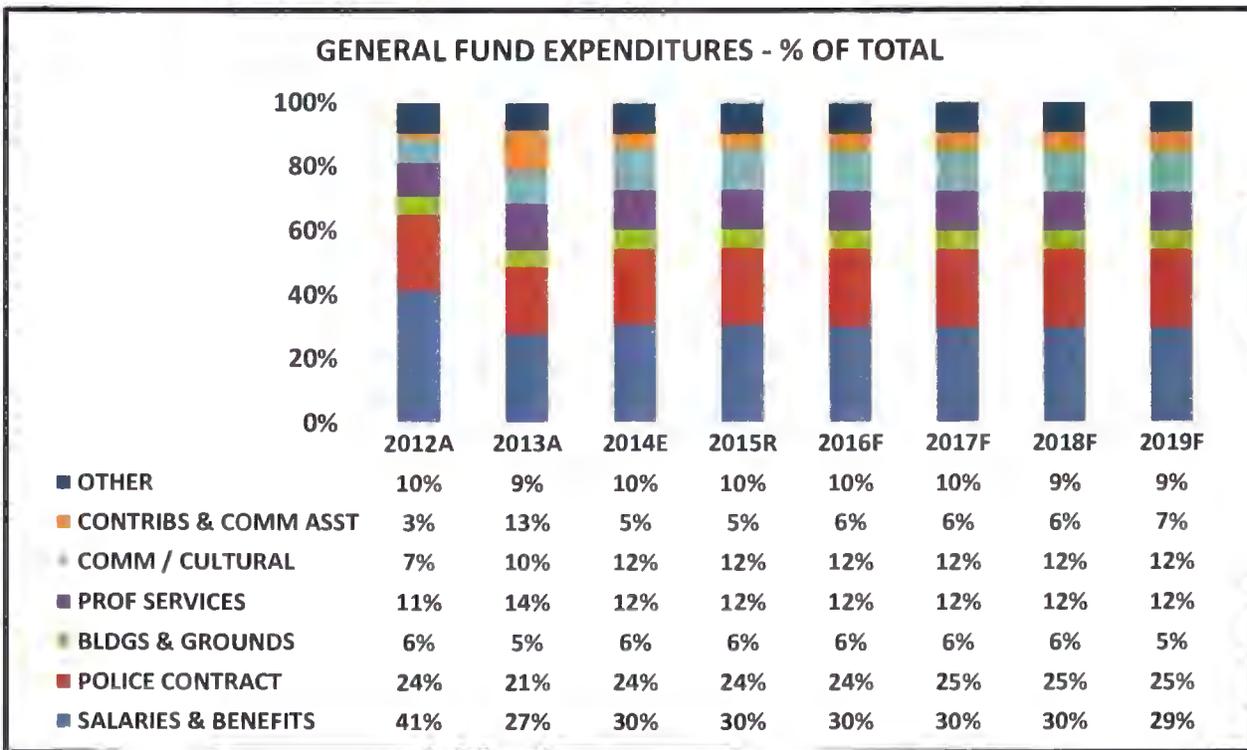
Total General Fund expenditures are anticipated to be \$13,763,779 during fiscal year 2013/14. General Fund operational costs are expected to increase \$353,702 (2.5%) moving into fiscal year 2013/14 citing anticipated increases in administrative costs, public safety, community activities, and contract services.

Beginning in fiscal year 2013/14, the City operating budget will account for \$750,000 in annual capital replacement funding. The capital replacement funding breaks down into two funding categories: A) \$250,000 annually to repay the borrowing of \$2,500,000 for the ten year tennis naming rights extension, and B) \$500,000 annually in capital replacement funding.

How General Fund Costs are allocated by category:



How General Fund Costs are allocated as a % of the total:



70

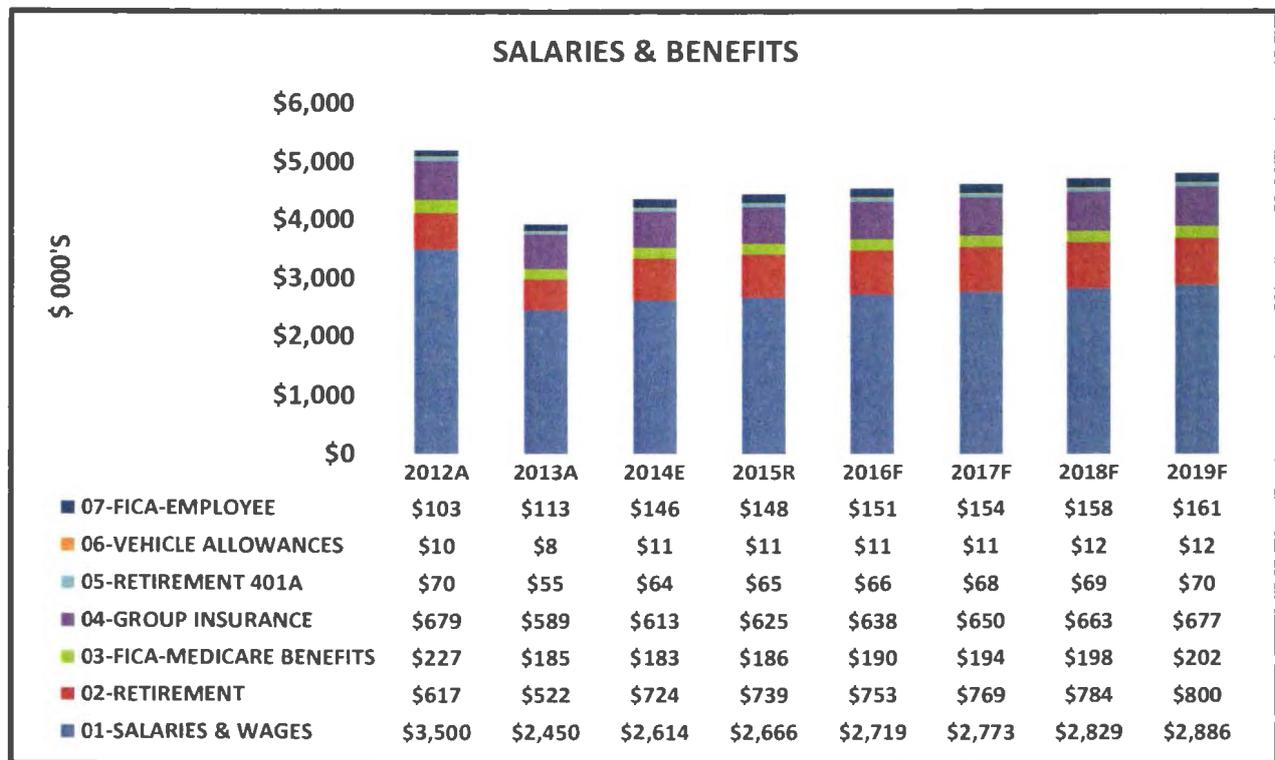
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## Salary and Benefits

Because the City is a service organization, the single largest portion of General Fund expenditures is dedicated to the cost of employee services. The City spends approximately 30.3% of its operating budget on administrative costs for twenty-nine full time employees. This is down from 41.4% in 2012.

Employees are grouped into three different categories: (a) Indian Wells Employees Association, (b) Unrepresented, (c) Senior Management. Salaries and benefits for the Indian Wells Employees Association are set forth in Memorandums of Understanding (MOUs). Pay and benefits for management, confidential, and unrepresented employees are governed by resolution of the Council.

Salaries and wages – this figure includes full employees, overtime, vacation and sick time, stand-by pay, and all other special pay. Salaries and wages represent approximately 17.7% of the General Fund budget. CalPERS retirement benefits represent approximately 5.3%. Group insurance represents approximately 4.5%. The remaining 2.8% represents FICA and Medicare and 401 A benefits.



Since the adoption of the Budget, the City's Personnel/Risk/Public Safety Director has announced his retirement effective April 15, 2014. The City Manager will replace this position with two lower paid positions: an Assistant to the City Manager and a Senior Accountant. The City has begun recruitment. Staff currently believes there will be sufficient savings from the senior management position (April 15 – June 30, 2014) to fund the two new positions predicated on expected hire dates. Once the positions are actually filled, Staff will transfer budgets accordingly and any potential shortfalls will be managed internally.

A full listing of employee benefits is attached to this staff report.

	2012A	2013A	2014E	2015R	2016F	2017F	2018F	2019F
01-SALARIES & WAGES	28.4%	17.8%	17.7%	17.8%	17.6%	17.7%	17.7%	17.7%
02-RETIREMENT	5.0%	3.8%	5.3%	5.2%	5.2%	5.1%	5.1%	5.1%
03-FICA-MEDICARE BENEFITS	1.8%	1.3%	1.3%	1.3%	1.3%	1.3%	1.3%	1.3%
04-GROUP INSURANCE	5.5%	4.3%	4.5%	4.4%	4.4%	4.4%	4.3%	4.3%
05-RETIREMENT 401A	0.6%	0.4%	0.5%	0.5%	0.5%	0.5%	0.4%	0.4%
06-VEHICLE ALLOWANCES	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
07-FICA-EMPLOYEE	0.8%	0.8%	1.1%	1.1%	1.0%	1.0%	1.0%	1.0%
<b>SUBTOTAL-SALARIES &amp; BENEFITS</b>	<b>42.3%</b>	<b>28.5%</b>	<b>30.3%</b>	<b>30.4%</b>	<b>30.0%</b>	<b>30.1%</b>	<b>30.0%</b>	<b>29.9%</b>

Assumptions that went into projected salary and benefit expenditures were as follows:

- 2013/14 – Salaries and benefits for fiscal year 2013/14 are budgeted at \$4,353,348. The budget for fiscal year 2013/14 considers a 4% cost of living adjustment, the addition of a full time City Manager and Public Works Director, as well as a new Assistant Planner to take the place of the Planning Tech II position. Includes the 16.07% employer contribution rate for employee retirement (provided by CalPERS), actual full time and retiree medical premiums (provided by CalPERS), and actual full time vision and dental premiums.
- 2014/15 – Assumes a full time staff of 29 employees with no changes to current staffing levels. While a new MOU with represented and unrepresented will need to be negotiated, for budgetary purposes a two percent (2%) cost of living was added. Assumes a 17.692% employer contribution rate for employee retirement (provided by CalPERS), assumes full time and retiree medical premiums will increase by 5%, and assumes a 4% increase in vision and dental premiums.
- 2015/16 - Assumes a full time staff of 29 employees with no changes to current staffing levels. For budgetary purposes a two percent (2%) employee cost of living was added. Assumes an 18.6% employer contribution rate for employee retirement (provided by CalPERS). Assumes full time and retiree medical premiums will increase by 5%. Assumes a 4% increase in vision and dental premiums.

- 2016/17-2018/19 – Assumes a full time staff of 29 employees with no changes to current staffing levels. For budgetary purposes a two percent (2%) employee cost of living was added. Assumes an 18.6% employer contribution rate for employee retirement (provided by CalPERs). Assumes full time and retiree medical premiums will increase by 5%. Assumes a 4% increase in vision and dental premiums.

## **Operating Costs**

### **Professional Services**

The City spends approximately 12.8% of its operating budget on professional service costs. Indian Wells is largely a contract management city and routinely bids contracts for professional services from the private sector. These professional services range from audit services to plan check services, inspection services, animal control services, human resources, legal services, and engineering services.

Assumptions that went into projected professional service expenditures were as follows:

- 2013/14 – Assumes a (14.4%) decrease during fiscal year 2013/14 primarily due to loss of management contract staff which included the former City Manager, Public Works Director, and Community Development Director. This cost savings is offset somewhat by the addition of a contract building plan checker and inspector. Costs associated with planning and building services are offset by the collection of associated permit fees for these services (See License and Permit revenues). The professional services budget is \$1,759,610 during fiscal year 2013/14.
- 2014/15 – Assumes a 3% increase to maintain the same levels of services acquired during fiscal year 2013/14.
- 2015/16 - Assumes a 2% increase to maintain the same levels of services acquired during fiscal year 2013/14.
- 2016/17-2018/19 – Assumes a 2% increase to maintain the same levels of services acquired during fiscal year 2013/14.

### **Public Safety**

The City spends approximately 25.0% of its operating budget on public safety costs. The Public Safety Department encompasses City services which focus on crime, fire, emergency medical, hazardous and disaster related needs of the Indian Wells community. The City Manager is the coordinator of public awareness and preparedness for emergency and disaster response at the local level, working to bring together the resources of various outside agencies. A driving force behind the program's outcomes is

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assuring the City continues to be one of the safest cities in the nation. A major contributing factor to the overall efficiency of the Public Safety program has been the dynamic nature in which police and fire department members have applied resources toward a wide range of enforcement, intervention and prevention issues.

The Public Safety Department is responsible for the Police, Fire, Community Service Officers (CSO), Animal Control, Code Enforcement and Emergency Preparedness services. The primary mission of the Indian Wells public safety program is to protect the lives and property of the citizens of the City, to preserve the public peace and apprehend those who violate the law. The Public Safety Program provides for law enforcement and public safety within the City by contracting with the Riverside County Sheriff's Department. Contract services include patrol, traffic enforcement, investigations, dispatch, and support personnel.

#### Police Program

The City contracts with the Riverside County Sheriff's Department for these services. Current patrol staffing consists of twenty-four hours per day, seven days a week, three hundred and sixty-five days per year. This level of service is equivalent to six deputies per day. On a per capita basis, the City maintains the highest level of law enforcement services in the Coachella Valley. The City also contracts for two full time motorcycle deputies, two Burglary Suppression Unit deputies, crime analyst services and commercial law enforcement services.

#### Emergency Operations

To deal with the possibility of emergencies such as major earthquakes, power outages, floods, high-pressure pipeline breaks and terrorism the City created the Emergency Services Program. The Emergency Services Program is responsible for the acquisition of resources necessary to carry out emergency response, operations and recovery in the event of major natural disaster or local emergency. The City's preparedness includes a fully equipped Emergency Operations Center (EOC) for sustained operations.

Assumptions that went into projected public safety services expenditures were as follows:

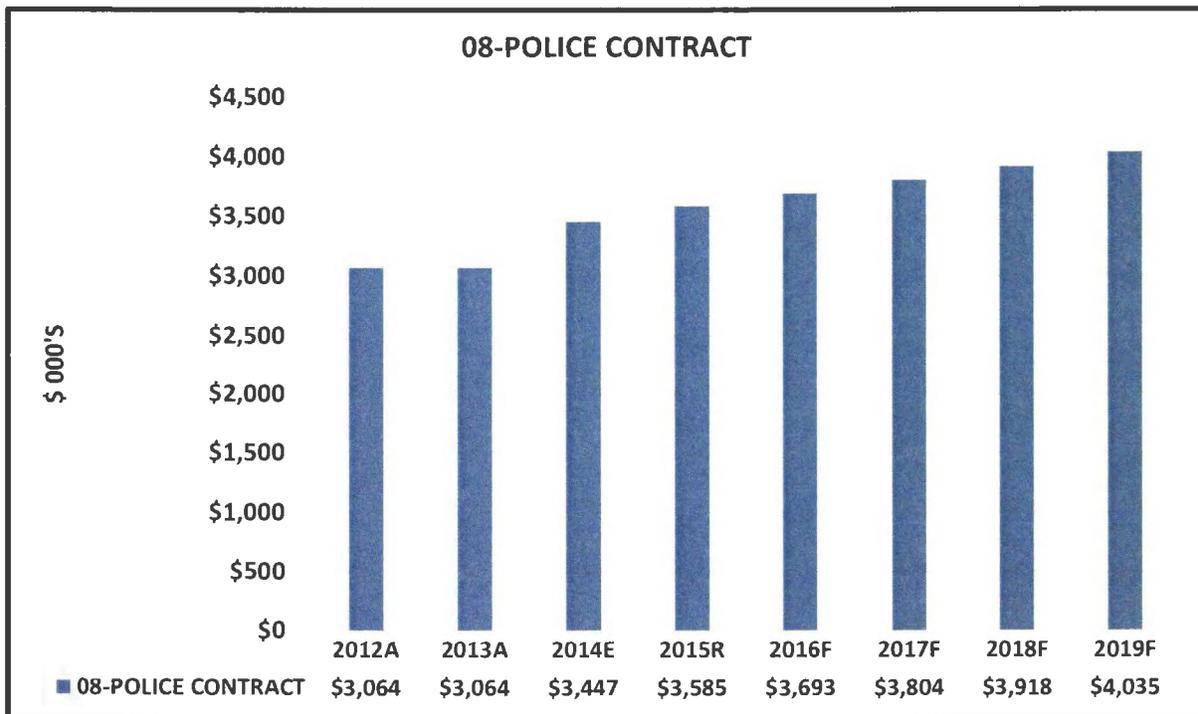
- 2013/14 – Fiscal year 2013/14, police contract services were initially budgeted to increase 4.0% to \$3,447,402 due to anticipated increases in patrol and CSO rates, increased facility charges, and added fuel costs. Since the original budget was adopted in June 2013, the City has closed fiscal year 2012/13. Actual police costs during fiscal year 2012/13 were less than originally anticipated. Consequently, the new fiscal year 2013/14 police budget actually represents a 12.5% increase. Staff expects to realize savings from the original budget discussions with the Riverside County Sherriff's department.

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- 2014/15 – Assumes the same levels of services as described above. Based upon discussions with Riverside County Sheriff’s Department Officials, the City will assume an overall 4.0% increase in the cost of services.
- 2015/16 - Assumes the same levels of services as described above. Based upon discussions with Riverside County Sheriff’s Department Officials, the City will assume an overall 4.0% increase in the cost of public safety services.
- 2016/17-2018/19 – Assumes the same levels of services as described above. Based upon discussions with Riverside County Sheriff’s Department Officials, the City will assume an overall 4.0% increase in the cost of public safety services.

Combined Police Contract and CSO Trends Table



Building and Grounds Maintenance

The City spends approximately 6.0% of its operating budget on building and grounds maintenance costs. This is up from 5.3% in 2012. The Building and Grounds Maintenance budget manages all of the City’s maintenance needs including annual tree trimming, catch basin maintenance, street seeping, roadway signage, irrigation repairs, plant replacement(s) lighting, vandalism, Walk of Honor, and all public area landscape maintenance.

Assumptions that went into projected budget on building and grounds maintenance expenditures were as follows:

- 2013/14 – Fiscal year 2013/14, building and grounds maintenance costs were initially budgeted to increase 2.0% to \$826,325 due to anticipated increases in existing landscape contracts. Since the original budget was adopted in June 2013, the City has closed fiscal year 2012/13. Actual building and grounds maintenance costs during fiscal year 2012/13 were less than originally anticipated. Much of the building and grounds maintenance budget revolves around annual maintenance including storm and sewer clean outs, tree trimming and removal, signage repair, and catch basin cleaning. Although budgeted annually, Maintenance Staff assesses the need for maintenance and can sometimes forgo certain types of annual maintenance until the following year thereby reducing operating costs. Consequently, the new fiscal year 2013/14 budget actually represents a 13.7% increase.
- 2014/15 – Assumes the same level of services currently being provided for existing landscaping contracts and in-house maintenance services. Assumes a 3.3% increase to maintain existing contracts and anticipated price increase of goods and services.
- 2015/16 - Assumes the same level of services currently being provided for existing landscaping contracts and in-house maintenance services. Assumes a 2% increase to maintain the same levels of services.
- 2016/17-2018/19 – Assumes the same level of services currently being provided for existing landscaping contracts and in-house maintenance services. Assumes a 2% increase to maintain the same levels of services.

#### Community Information

The City spends approximately 2.2% of its operating budget on Community Information costs. This is up from 1.4% in 2012. The City has budgeted \$291,330 to fund the Community Information program during fiscal year 2013/14. The program includes the production and distribution of the City's newsletter, hosting of the Indian Wells television channel which broadcasts City Council meetings, Town Hall meetings, and the State of the City address. The program also includes funding for regular E-Blasts and other community mailings essential for maintaining open lines of communication.

## Marketing Budget

The City spends approximately 7.5% of its operating budget on marketing. The purpose of marketing tourism is the generation of additional transient occupancy taxes and brand awareness. In addition to brand awareness and increased transient occupancy taxes; the marketing plan focuses in part to the generation of additional hotel golf group and leisure business designed to increase revenues at the Indian Wells Golf Resort. The City has budgeted \$396,524 for direct tourism marketing.

The City participates in the Greater Palm Springs Convention and Visitor's Bureau Business Improvement District (BID) to support its worldwide marketing and branding efforts attracting local tourism. Under the terms of the BID formula, the City is required to pay 25% of 1.4% of the gross hotel room sales collected by the hotels located in Indian Wells. Collectively, hotel partners in Indian Wells have estimated the collection of \$58,493,449 in gross hotel room sales during fiscal year 2013/14 resulting in a BID contribution budget of \$204,727. The actual contribution to the CVA will depend on actual gross hotel room sales collected by hotel partners.

The marketing budget further supports other economic development programs including Wildlights held at the Living Desert, sponsorship to the Desert Town Hall Speaker's Series, and funding of the City's Naming Rights agreement with the Indian Wells Tennis Gardens. These economic development programs are budgeted at \$365,000 annually.

## Community Activities

The City s spends approximately 3.3% of its operating budget on Community Activities. This is up from 3.0% in 2012. The Community Activities program accounts for all of the City's resident and community events including three resident patio parties, Wild Lights at the Living Desert, the "Day at Sea" event, Veterans' and Memorial Day ceremonies, local polo events, and our annual tree lighting ceremony. Additional funding is provided to allow residents to experience events held at the Joslyn Senior Center, VUE Grill & Bar, and the County Library system. The City has budgeted \$448,950 to fund the Community Activities program during fiscal year 2013/14.

**Five Year Capital Improvement Plan**

The Capital Improvement Program (CIP) refers to a local government's ongoing program for the development of the City's capital facilities and improvements. The CIP project pages are designed to provide citizens and City officials with accurate and informative financial and logistical information for every CIP project currently in progress. The Capital Improvement Program is not a budget but rather a financial plan for capital improvements for the next five years.

The program is not a commitment for spending; no authorization to spend funds exists until the City Council adopts the budget that includes the first two years of the five-year program. Once the budget is adopted, each project or acquisition is returned to the Council for specific approval. The proposed Capital Improvement Program does not contemplate the use of reserve funds for capital development.

The five-year capital improvement plan is budgeted at \$13,136,644 and conforms to performance expectations of the City's long-term cash flow analysis. The City's share of the five-year capital improvement plan is \$7,716,856. The City has cash reserves in the Capital Improvement fund for this purpose. The cash balance in the Capital Improvement fund at the beginning of this five year capital plan was \$8,732,334, as such; Staff does not foresee the need for additional General Fund reserves during the next five years.

The City's five year Capital Improvement Program is attached to this staff report. The five year Capital Improvement Program provides readers a detailed listing of capital projects and specific funding sources dedicated to them.

**Capital Consolidated Funding Sources**

<u>City Funds</u>	<u>Use of Other Funds (Not General Fund)</u>				
<u>City Capital Improvement Fund</u>	<u>CVAG</u>	<u>SCE Rule 20A Credits</u>	<u>Art in Public Places</u>	<u>Fire Fund Reserves</u>	<u>Total Funding</u>
7,716,856	3,044,788	1,950,000	285,000	140,000	13,136,644

## Reserves

**Emergency Reserve Fund:** The General Fund Emergency Reserve Fund was established in the event of a catastrophic disaster or major economic downturn that would impact the major revenue source to the City such as transient occupancy tax. The City Council has reserved \$2,250,000 for this purpose.

**Infrastructure Reserve:** The Infrastructure Reserve was created to accumulate funding for new infrastructure development and the on-going rehabilitation of existing buildings and facilities, streets and sidewalks, parks and open space and transportation systems.

### **Annual Capital Depreciation Requirement**

	Description	Cost	Basis for Depreciation
1	Facilities	6,449,658	38,698
2	Infrastructure	103,307,526	1,420,890
3	FF&E and Rolling Stock	1,845,233	130,089
4	Golf Resort	83,428,419	814,842
5	Housing	59,374,257	361,267
	Totals	254,405,093	2,765,785

Fund	Capital Replacement Program Funds	Balance at July 1, 2013	Anticipated Interest Income @ 1.3%	Use of General Fund Surplus	Basis for Depreciation	Short Fall
1 330	Facilities	2,262,684	27,152		38,698	(11,546)
2 326	Infrastructure	6,912,230	82,947		1,420,890	(1,337,943)
3 327	FF&E and Rolling Stock	2,262,654	27,152		130,089	(102,937)
4 328	Golf Resort Capital	3,921,425	47,057		814,842	(767,785)
5 329	Affordable Housing	1,482,909	17,795	250,000	361,267	(93,472)
	Use of General Fund Surplus			500,000		500,000
	<b>Total Capital</b>	<b>16,841,902</b>	<b>202,103</b>	<b>750,000</b>	<b>2,765,785</b>	<b>(1,813,682)</b>

## **ATTACHMENTS:**

1. General Fund Cash Flow
2. CIP Schedule and 5 Year Projection
3. Employee Benefits
4. City's Financial Policies and Practices
5. City Council's Issues

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**CITY OF INDIAN WELLS, CA, GENERAL FUND  
GENERAL FUND SUMMARY**

**INDEX**

	2012A	2013A	2014B	2014E	2015R	2016F	2017F	2018F	2019F
<b>BEGINNING FUND BALANCE</b>	<b>6,862,334</b>	<b>7,717,941</b>		<b>8,686,610</b>	<b>9,606,073</b>	<b>10,782,734</b>	<b>11,282,734</b>	<b>11,782,734</b>	<b>12,282,733</b>
<b>REVENUES &amp; SOURCES, BY ACCOUNT GROUP</b>									
01-PROPERTY TAXES	2,019,924	2,213,843	2,165,720	2,255,720	2,320,692	2,367,105	2,414,448	2,462,736	2,511,991
02-SALES TAXES	992,271	945,359	998,810	978,810	1,020,824	1,041,241	1,062,066	1,083,307	1,104,973
03-TRANSIENT OCCUPANCY TAX	5,689,955	6,341,825	6,580,513	6,490,513	6,753,733	6,888,808	7,026,584	7,167,116	7,310,458
04-FRANCHISE TAXES	848,257	860,303	899,190	899,190	926,166	944,689	963,583	982,854	1,002,512
05-OTHER TAXES	66,294	97,822	51,500	51,500	52,530	53,581	54,652	55,745	56,860
06-REAL PROPERTY TRANSFER TAX	209,057	194,120	133,900	153,900	137,917	140,675	143,489	146,359	149,286
07-ADMISSIONS TAX	1,544,870	1,816,400	1,803,600	2,007,600	2,198,800	2,374,704	2,517,186	2,643,046	2,695,906
08-LICENSE & PERMIT FEES	225,788	437,537	328,070	308,070	322,833	326,061	329,322	332,615	335,941
09-FINES & FORFEITURES	139,573	95,257	82,500	82,500	84,900	86,598	88,330	90,097	91,898
10-INTEREST INCOME	380,698	6,682	90,000	38,000	39,800	40,596	41,408	42,236	43,081
11-USE OF MONEY & PROPERTY	51,344	44,476	77,985	77,985	79,545	81,136	82,758	84,413	86,102
12-INTERGOVERNMENTAL	382,613	381,405	419,725	419,725	428,120	436,682	445,416	454,324	463,410
13-CURRENT SERVICE CHARGES	608,719	911,752	783,800	753,800	761,276	768,889	776,578	784,343	792,187
14-OTHER REVENUES	17,962	168,731	150,050	150,050	153,050	156,111	159,233	162,418	165,666
15-DEVELOPMENT AGREEMENT FEES	39,996	86,681	79,992	79,992	79,992	81,592	83,224	84,888	86,586
<b>TOTAL - REVENUES &amp; SOURCES</b>	<b>13,217,321</b>	<b>14,602,193</b>	<b>14,645,355</b>	<b>14,747,355</b>	<b>15,360,177</b>	<b>15,788,468</b>	<b>16,188,276</b>	<b>16,576,498</b>	<b>16,896,858</b>
<b>EXPENDITURES &amp; USES, BY ACCOUNT GROUP</b>									
01-SALARIES & WAGES	3,499,958	2,450,120	2,613,508	2,613,508	2,665,778	2,719,094	2,773,476	2,828,945	2,885,524
02-RETIREMENT	616,894	521,773	724,223	724,223	738,707	768,256	798,986	830,945	864,183
03-FICA-MEDICARE BENEFITS	227,254	184,859	182,662	182,662	186,315	188,178	190,060	191,961	193,880
04-GROUP INSURANCE	678,558	588,897	612,899	612,899	625,157	650,163	676,170	703,217	731,345
05-RETIREMENT 401A	69,777	54,659	63,612	63,612	64,884	66,182	67,506	68,856	70,233
06-VEHICLE ALLOWANCES	10,277	8,077	10,800	10,800	10,896	10,896	10,896	10,896	10,896
07-FICA-EMPLOYEE	102,828	112,711	145,644	145,644	148,417	149,901	151,400	152,914	154,443
<b>SUBTOTAL-SALARIES &amp; BENEFITS</b>	<b>5,205,546</b>	<b>3,921,096</b>	<b>4,353,348</b>	<b>4,353,348</b>	<b>4,440,155</b>	<b>4,552,670</b>	<b>4,668,493</b>	<b>4,787,734</b>	<b>4,910,505</b>
08-POLICE CONTRACT	3,063,808	3,064,414	3,447,402	3,447,402	3,585,298	3,728,710	3,877,859	4,032,973	4,194,292
09-PROFESSIONAL SERVICES	1,349,803	2,055,849	1,759,610	1,759,610	1,817,510	1,853,860	1,890,937	1,928,756	1,967,331
10-BUILDINGS & GROUNDS MAINTENANCE	700,844	726,626	826,325	826,325	829,155	845,738	862,653	879,906	897,504
11-UTILITIES	87,335	103,167	150,625	150,625	153,506	158,111	162,855	167,740	172,773
12-COMMUNITY INFORMATION	211,543	186,020	302,830	302,830	311,801	318,037	324,398	330,886	337,503
13-COMMUNITY ACTIVITIES	74,019	416,310	448,950	448,950	462,059	471,300	480,726	490,340	500,147
14-MARKETING	557,795	875,132	1,034,251	1,034,251	1,054,336	1,075,423	1,096,931	1,118,870	1,141,247
15-COMMUNITY ASSISTANCE	326,362	370,917	256,000	256,000	256,000	261,120	266,342	271,669	277,103
16-OFFICE EXPENSE	405,644	398,049	546,078	546,078	556,265	567,390	578,738	590,313	602,119
17-TRAINING	137,884	129,417	30,310	30,310	30,724	31,339	31,966	32,605	33,257
18-INSURANCE EXPENSES	594,887	588,579	654,050	654,050	673,672	700,618	728,643	757,789	788,100
19-CONTRIBUTIONS TO CAPITAL	-	1,450,000	500,000	500,000	500,000	1,220,855	1,224,373	1,203,688	1,102,083
20-REIMBURSABLE CREDITS FROM OTHER FUNDS	(407,020)	(508,481)	(546,000)	(546,000)	(553,000)	(564,060)	(575,341)	(586,848)	(598,585)
<b>SUBTOTAL-OTHER EXPENDITURES</b>	<b>7,102,904</b>	<b>9,855,999</b>	<b>9,410,431</b>	<b>9,410,431</b>	<b>9,677,326</b>	<b>10,668,442</b>	<b>10,951,079</b>	<b>11,218,687</b>	<b>11,414,875</b>
<b>TOTAL - EXPENDITURES &amp; USES</b>	<b>12,308,450</b>	<b>13,777,095</b>	<b>13,763,779</b>	<b>13,763,779</b>	<b>14,117,481</b>	<b>15,221,112</b>	<b>15,619,572</b>	<b>16,006,421</b>	<b>16,325,380</b>
<b>NET FAVORABLE/(UNFAVORABLE) - OPERATING</b>	<b>908,871</b>	<b>825,098</b>	<b>881,575</b>	<b>983,575</b>	<b>1,242,696</b>	<b>567,356</b>	<b>568,703</b>	<b>570,077</b>	<b>571,479</b>
16-TRANSFERS IN	-	6,400,000	-	-	-	-	-	-	-
21-TRANSFERS OUT	53,264	6,256,429	64,112	64,112	66,035	67,356	68,703	70,077	71,479
<b>NET FAVORABLE/(UNFAVORABLE) - TOTAL</b>	<b>855,607</b>	<b>968,669</b>	<b>817,463</b>	<b>919,463</b>	<b>1,176,661</b>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>
<b>ENDING FUND BALANCE</b>	<b>7,717,941</b>	<b>8,686,610</b>		<b>9,606,073</b>	<b>10,782,734</b>	<b>11,282,734</b>	<b>11,782,734</b>	<b>12,282,733</b>	<b>12,782,733</b>

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## City of Indian Wells Capital Improvement Project Schedule and 5 Year Projection

Service Area	Fund	Project	Project Description	Project Status	2013/14	2014/15	2015/16	2016/17	2017/18	Total	City Paid	Outside Agency, Developer Fees, or Other Grant	Reimbursing Agency
					Cash Flow	Cash Flow	Cash Flow	Cash Flow	Cash Flow	Project	Capital Cost	Reimbursement	
<b>Public Safety</b>													
	228	99.64	Frazer Ambulance Box Remount	on-going project			110,000			110,000	110,000		
	228	99.64	Exercise Room Enclosure	on-going project	30,000					30,000	30,000		
			<b>Total Public Safety</b>		<b>30,000</b>	<b>-</b>	<b>110,000</b>	<b>-</b>	<b>-</b>	<b>140,000</b>	<b>140,000</b>	<b>-</b>	<b>-</b>
<b>Infrastructure</b>													
	316	93.07	IW Village Underground Utility Project Rule 20A	estimate of roll budget	2,280,678					2,280,678	330,678	1,950,000	Rule 20 A
	316	93.07	IW Village Underground Utility Project Rule 20B	estimate of roll budget	3,518,000					3,518,000	3,518,000		
	316	93.12	Hwy 111 Phase 3 Project (Design/Bid Pending)	estimate of roll budget	3,582,940					3,582,940	538,152	3,044,788	CVAG
	316	93.15	Street Striping	on-going project	25,000	25,000	25,000	25,000	25,000	125,000	125,000		
	316	93.20	Street Grind Overlay	on-going project			1,000,000			1,000,000	1,000,000		
	316	93.21	Street Grind Overlay on Cook/Eldorado/Rancho	on-going project			500,000			500,000	500,000		
	316	93.22	Slurry Seal on Local Streets	on-going project	250,000		250,000			500,000	500,000		
	316	93.23	Slurry Seal on Hwy 111	on-going project				100,000		100,000	100,000		
	316	93.24	Slurry Seal on Fred Waring	on-going project						-	-		
	316	93.25	Slurry Seal on Miles Avenue	on-going project		400,000				400,000	400,000		
	319	93.29	Carl Bray	estimate of roll budget	35,000					35,000	35,000		
	319	93.30	Cook Entry	estimate of roll budget	250,000					250,000	250,000		
	316	93.32	Hwy 111 Parkway Landscape Replacements (MVV Parkway, Montelena, Eldorado Median, Rancho Palمراس Median, Cook Median)	estimate of roll budget	111,476					111,476	111,476		
	316	93.33	LED Street Names and Signs	on hold									
	316	93.34	Hwy 111 Bus Shelter Rehab	on hold									
	316	99.64	City Vehicle Replacement	on-going project		25,000		30,000		55,000	55,000		
	316	93.36	Walk of Honor Civic Center Rework	on-going project		300,000				300,000	300,000		
	316	93.38	45-300 Club Drive Remodel	estimate of roll budget	163,550					163,550	163,550		
	316	93.39	45-200 Club Drive Remodel, Suite A & D	estimate of roll budget	75,000					75,000	75,000		
			<b>Total Infrastructure</b>		<b>10,291,644</b>	<b>750,000</b>	<b>1,775,000</b>	<b>155,000</b>	<b>25,000</b>	<b>12,996,644</b>	<b>8,001,856</b>	<b>4,994,788</b>	<b>-</b>
<b>Total</b>					<b>10,321,644</b>	<b>750,000</b>	<b>1,885,000</b>	<b>155,000</b>	<b>25,000</b>	<b>13,136,644</b>	<b>8,141,856</b>	<b>4,994,788</b>	<b>-</b>

### Capital Consolidated Funding Sources

City Funds	Use of Other Funds (Not General Fund)					
	City Capital Improvement Fund	CVAG	SCE Rule 20A Credits	Art in Public Places	Fire Fund Reserves	Total Funding
Total 5 Year Capital Improvement Project	7,716,856	3,044,788	1,950,000	285,000	140,000	13,136,644

**CITY OF INDIAN WELLS  
2013 EMPLOYEE BENEFITS  
Employees, Supervisors and Department Heads**

<b>PERS Retirement:</b>	PERS benefit package includes highest single year compensation provision and 2.7% at 55. (legacy employees) Employer and employee portion paid by the City.
<b>Medical Insurance:</b>	City pays 100% for PERS plan (HMO or PPO) for employees and dependents hired before December 31, 2008. For employees hired after January 1, 2009 (Tier B employee), the City pays 100% for employee and dependents for HMO Plan only. If employee opts for the PPO plan, employee will be responsible for the difference between the two plans. City also covers up to \$1000 per year for deductibles and prescriptions. "Tier B" Employees must work 20 years with the City of Indian Wells to be eligible for full life-time health benefits. The City also pays for Long and Short term disability coverage.
<b>Social Security:</b>	Employer paid
<b>Vacation:</b>	Ten days to start, one day extra per year up to 25 days
<b>Administrative Leave:</b>	Up to 10 days per year (Exempt employees only)
<b>Holidays:</b>	Eleven paid holidays per year plus one floating
<b>Sick Leave:</b>	Twelve days per year
<b>Dental:</b>	City pays 100% for employee and dependents
<b>Vision:</b>	City pays 100% for employee and dependents
<b>Life Insurance:</b>	1 1/2 times annual salary up to a minimum of \$100,000
<b>Deferred Comp:</b>	City paid 401A plan at 2 1/2% annual salary; optional employee paid 457 plan with ICMA
<b>Education:</b>	100% paid at State University on pre-approval
<b>Prof Development:</b>	Fully paid on pre-approval
<b>Car Allowance:</b>	\$200 per month for Department Heads only, all other employees have use of a City provided vehicle for City business only.

## **City's Financial Policies and Practices**

### **Budget Performance Policy**

The budget is a performance, financing, and spending plan agreed to by the Mayor, City Council, City Manager, and other Council Appointees. It should contain information and data regarding expected revenues and resources (inputs), expected expenditures, and expected performance (outcomes). During the fiscal year, actual experience (revenues, expenditures, and performance) will be periodically measured against the plan. The City will prepare and refine written goals and policies to guide the preparation of financing, spending, and performance plans for the City budget. Proposed budgets will comply with the proposed budget policies and Council priorities. Department and program managers will not exceed the Council-approved appropriations in any fund. The City Council may approve modifications to these appropriations throughout the year as warranted by revenue collections and activity demands.

### **Balanced Budget Policy and Fiscal Integrity**

The City will maintain fiscal integrity of its operating, debt service, and capital improvement budgets, which provide services and maintain public facilities, streets, and public safety. The City will maintain a balanced budget over the biennial period of the Financial Plan. Requirements of the balanced budget include operating revenues which must fully cover operating expenditures, including debt service. This means current operating expenditures will be financed with current revenues.

The budget will provide sufficient funding for adequate maintenance and orderly replacement of capital plant and equipment. The City shall properly budget future maintenance needs which will be fully costed out, and added costs will be recognized and included in future year's budget projections. Productivity improvements resulting in cost reductions will remain an important budgetary goal. It is allowable for total expenditures to exceed revenues in a given year; however, in this situation, beginning fund balance can only be used to fund capital improvement plan projects, or other one-time, nonrecurring expenditures.

The City will maintain a budget control system to adhere to the budget. Ongoing operating program costs will not exceed the amount of ongoing revenue to finance those costs. The ongoing revenue source will be identified along with any new program costs. The City does not establish a contingency reserve as part of its budgeting practices; rather, supplemental appropriations are approved as new programs or projects come before the City Council.

## **Fraud Prevention and Deterrence Policy**

A favorable culture requires integrity in the administration of the City's resources to ensure public trust. The City of Indian Wells is committed to protecting the organization, its operations, its employees and its assets against the risk of loss or misuse. The City is committed to protecting against fraud, forgery, dishonesty, theft and other similar improprieties. Accordingly, it is the policy of the City to identify and promptly investigate any possibility of fraudulent or related dishonest activities against the City and, when appropriate, to pursue legal remedies available under the law.

It is the policy of the City of Indian Wells governing board to facilitate the development of controls which will aid in the detection and prevention of fraud, impropriety or irregularity within the City. It is the intent of the governing board to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations.

Managing the risk of fraud should be high on the list of priorities of all organizations. Any risk may be a serious threat to an organization's well being. Fraud is a real threat to the financial health of an organization and its image and reputation.

It is the City's intent to fully investigate any suspected acts of fraud, misappropriation, or other similar irregularity. The proper response to an indicator of fraud is investigation and resolution. An objective and impartial investigation will be conducted regardless of the position, title, and length of service or relationship with the City of any party who might be or become involved in or becomes the subject of such investigation.

Fraud can range from minor employee theft and unproductive behavior to misappropriation of assets and fraudulent accounting reporting. Fraud can happen in any department and at any level within the organization. Material financial statement fraud can have a significant adverse effect on an entity's market value, reputation, and ability to achieve its strategic objectives. Misappropriation of assets, though often not material to the financial statements, can nonetheless result in substantial losses to an entity if a dishonest employee has the incentive and opportunity to commit fraud. Someone in the entity may have observed a person committing or concealing a fraud. Often, those with knowledge of a fraud have stated after the fact that they would have told someone, "but nobody asked".

Managing the risk of fraud can be reduced through a combination of prevention, detection, investigation, and insurance. Fraud can be difficult to detect because it often involves collusion among management, employees, or third parties. It is important, therefore, to place a strong emphasis on fraud prevention, which may reduce opportunities for fraud to take place, and fraud deterrence, which could persuade individuals that they should not commit fraud because of the likelihood of detection and

punishment. Prevention and deterrence measures are far less costly than the time and expense that is involved for fraud detection and investigation.

The measures the governing body takes to prevent and to deter fraud also helps in creating for a workplace environment that is positive and adds to the likelihood in recruiting and retaining high-quality employees. Research has shown that the most effective way to implement measures to reduce wrongdoing is to base them on a set of core values that are embraced by the organization. The City of Indian Wells has implemented measures to reduce the incidence of fraud by incorporating within its culture a set of twelve cultural values. These values create a positive workplace environment adding to the prevention and deterrence of fraud.

Awareness of management's responsibility for internal control and fraud detection has been heightened by the federal Sarbanes-Oxley legislation. A number of highly publicized cases have led many organizations to be more proactive in taking steps to prevent or deter its occurrence. The Government Finance Officers Association (GFOA) has gone on record stating that public sector financial managers have an affirmative obligation under GFOA Code of Professional Ethics to fulfill their internal control responsibility.

The Finance Committee of the City of Indian Wells is responsible for assisting the City Council in the assessment and enhancement of the effectiveness of internal controls and financial risk management. The Finance Committee provides advice to the City Council on appropriate frameworks for financial risk identification and management. The Finance Committee identifies and recommends measures to improve financial performance and achieve an adequate system of internal controls within the City.

Effective internal controls are the foundation of safe and sound practices that are designed to ensure the organization is effective and efficient. A properly designed and consistently enforced system of operational and financial internal control helps the governing body and management safeguard the City's resources, produce reliable reporting, and comply with laws and regulations. Effective internal control reduces the possibility of significant errors, risks, and irregularities and assists in their timely detection when they do occur. Management is primarily responsible for internal controls, and the governing body is ultimately responsible.

### **Summary of Investment Policy**

It is the policy of the City of Indian Wells to invest public funds in a manner which will provide the maximum security of the City's capital while meeting the daily cash flow demands of the City and conforming to all state and local statutes governing the investment of public funds; and beyond that, to maximize return within an acceptable and defined level of risk.

The standard to be used by investment officials shall be that of a "prudent person" and shall be applied in the context of managing all aspects of the overall portfolio. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, direction and intelligence exercise in the management 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.

It is the City's intent, at the time of purchase, to hold all investments until maturity to ensure the return of all invested principal dollars. However, it is realized that market prices of securities will vary depending on economic and interest rate conditions at any point in time. It is further recognized, that in a well diversified investment portfolio, occasional measured losses are inevitable due to economic, bond market or individual security credit analysis. These occasional losses must be considered within the context of the overall investment program objectives and the resultant long term rate of return.

The City Treasurer and other individuals assigned to manage the investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, shall be relieved of personal responsibility and liability for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.

Safety of principal is the foremost objective of the investment program. Investments of the City of Indian Wells shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To obtain this objective, the City will mitigate credit risk and interest rate risk.

The City of Indian Wells' investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements which might be reasonably anticipated. This is accomplished by striving to have securities mature at the same time as cash is needed to meet anticipated demands (static liquidity). Additionally, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity).

The City of Indian Wells' investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the City's investment risk constraints and the cash flow characteristics of the portfolio. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. Investments are limited to relatively low risk securities, as herein defined, in anticipation of earning a fair return relative to the risk being assumed.

### **Debt Policy**

The City's overriding goal in issuing debt is to respond to and to provide for the infrastructure and capital project needs of its customers while ensuring that debt is issued and managed prudently in order to maintain a sound fiscal position and protect

credit quality. The City issues debt instruments, administers debt proceeds and makes debt service payments, acting with prudence and diligence, and attention to prevailing economic conditions. This policy documents the City's goals for the use of debt instruments and provides guidelines for the use of debt for financing the City's infrastructure and project needs.

The City believes that debt is an equitable means of financing projects and represents an important means of providing for the infrastructure and project needs of the City's customers. Debt will be used to finance projects (i) if it meets the City's goal of equitable treatment of all customers, both current and future, (ii) if it is the most cost-effective means available to the City, and (iii) if it is fiscally prudent, responsible, and diligent under the prevailing economic conditions. The pay-as-you go method of using current revenues to pay for long-term infrastructure and other projects is often considered the preferred means of financing when sufficient revenues and reserves can be available as it avoids interest expense. The City will endeavor to pay for all infrastructure and other projects from a combination of current revenues, available reserves, and prudently issued debt.

The City debt management policy is designed to:

- Establish parameters for issuing debt;
- Provide guidance to decisions makers:
  - with respect to all options available to finance infrastructure and other capital projects;
  - so that the most prudent, equitable and cost effective method of financing can be chosen;
- Document the objectives to be achieved by staff both prior to issuance and subsequent to issuance;
- Promote objectivity in the decision-making process; and
- Facilitate the financing process by establishing important policy decisions in advance.

The City will adhere to the following legal requirements for the issuance of public debt:

- The state law which authorizes the issuance of the debt;
- The federal and state laws which govern the eligibility of the debt for tax-exempt status;
- The federal and state laws which govern the issuance of taxable debt;
- The federal and state laws which govern disclosure, sale and trading of the debt.

The City will provide for a periodic review of its financial performance, and review its performance relative to the financial policies outlined herein. These financial policies will be taken into account during the capital planning, budgeting and rate setting process.

In recognition of periodic changes in the cost of providing service to system users, service costs and fees will be reviewed annually and adjusted commensurately. The City will present any proposed adjustments to existing rates, fees and charges at public meetings, as it relates to such proposed changes. All City funds will be invested according to the Annual Statement of Investment Policy of the City. Necessary funding requirements for annual debt service requirements will be routinely included in the City's annual budget.

The City will maintain proactive communication with the investment community, including rating agencies, credit enhancers and investors, to ensure future capital market access at the lowest possible rates. The City evaluates each project in relation to established levels of reserves, current rate structure, expected asset life/replacement timeline, and available revenue sources to ensure that adequate financial resources are available to support the City's financial obligations.

The City Debt Management Policies and the Investment Policy are integrated into the decision-making framework utilized in the budgeting and capital improvement planning process. As such the following policies outline the City's approach to debt management.

The City will evaluate financing for each capital project on a case-by-case basis. The City will seek to pay for all capital projects from current revenues and available reserves prior to or in combination with the use of debt. The City will seek to issue debt only in the case where there is an identified source of repayment. Bonds will be issued to the extent that (i) projected fixed revenues are sufficient to pay for the proposed debt service together with all existing debt service covered by such fixed revenues, or (ii) additional projected revenues have been identified as a source of repayment in an amount sufficient to pay for the proposed debt.

### **Reserve Policy**

**Operating Reserve:** A General Fund contingency reserve amount which is a minimum of 15% of the operating budget is established. The purpose of this reserve is to meet unexpected circumstances, such as a General Fund revenue shortfall. Appropriate levels of contingency funds will be determined and maintained in the capital and special funds.

**Emergency Reserve Fund:** The General Fund Emergency Reserve Fund was established to be used in the event of a catastrophic disaster or major economic downturn that would impact the major revenue source to the City such as Transient Occupancy Tax. The City Council has reserved \$2,250,000 for this purpose. This balance will allow the City to continue providing the current level of service to the residents of Indian Wells.

At the end of each fiscal year, the Finance Department will report on the audited year-end budgetary fiscal results. Should actual General Fund revenues exceed expenditures

and encumbrances, a year-end operating surplus shall be reported. Any year-end operating surplus which results in the General Fund fund balance exceeding the level required by the reserve policy shall be deemed available for allocation for the following, subject to Council approval:

- Transfer to Capital Replacement funds, as appropriate,
- Transfer to the Capital Program Fund for appropriation within the Capital Improvement Program Budget and/or Deferred Maintenance for non-recurring needs,
- Re-appropriation within the subsequent year's operating budget to provide for one-time, non-recurring needs.

It is the intent of the City Council to limit use of fund balances in the General Fund to address unanticipated one-time needs. Fund Balances shall not be applied to recurring annual operating expenditures subject to the balanced budget policy.

Infrastructure Reserve: The Infrastructure Reserve was created to accumulate funding for new infrastructure development and the on-going rehabilitation of existing buildings and facilities, streets and sidewalks, parks and open space and transportation systems. The City Council has used the reserve to fund new capital projects as well. Because this reserve is to be used for priority capital projects that will be reviewed by the Council, no maximum reserve level is recommended. Conversely, because of the discretionary nature of this reserve, no minimum balance is required. It is the long term goal of the City to build an infrastructure reserve equal to 10 years of capital replacement requirements and to produce annual General Fund operating surplus sufficient to meet the City's annual capital contribution goal.

### **Other Funds**

In conjunction with approving the General Fund Reserve Policy, the City Council expresses its intent to evaluate other Special Revenue and Internal Service funds to establish appropriateness of developing formal fund-specific reserve policies.

### **Overhead Cost Allocation**

All overhead costs shall be allocated to the appropriate program within the limits of local, State and federal laws.

### **Multi-Year Estimates**

Each year the City will update expenditure and revenue projections for the next five years. Projections will include estimated maintenance and operating costs of future capital improvements that are included in the capital budget. This budget data will be presented to elected officials in a form that will facilitate annual budget decisions, based on a multi-year strategic planning perspective.

## **Fees**

Fees shall be set to cover 100% of the cost of service delivery, unless such amount prevents residents from obtaining an essential service. Fees or service charges should not be established to generate money in excess of the cost of providing services. Fees may be less than 100% if Council determines that other factors (e.g., market forces, competitive position, etc.) need to be recognized.

## **Interfund Loans**

Interfund loans are loans from one City fund to another City fund for a designated purpose. To ensure that all interfund loans are appropriate, properly documented, and not established to the detriment of the fund issuing the loan, the following interfund loan eligibility and documentation requirements are established. Interfund loans may not be used to solve ongoing structural budget problems. Interfund loans must have an identified repayment source and date; include an interest component that equals the investment earnings the fund would have received had the loan not occurred; and be immediately due and payable if needed by the fund that provided the loan.

Loan amount, term, and repayment source will be identified any time a loan is recommended. Loans will be coordinated with the City Attorney's Office to ensure compliance with the Municipal Code and will be approved by the City Council. Payments made on outstanding loans shall be reflected in the Proposed and Adopted Budget and Annual Report, as applicable. A summary of all outstanding loans will also be included in the annual Comprehensive Annual Financial Report (CAFR).

## **Risk Management**

The California Joint Powers Insurance Authority (CJPIA) was formed in 1978 under a joint exercise of powers agreement between local governments for the purpose of jointly funding programs of insurance under Section 990 of the California Government Code. The Authority is governed by a Board of Directors, which is composed of one director from each member organization which maintains membership in the Liability program.

Each year, the self-insured pool undergoes a retrospective deposit computation based on current incurred loss valuations. Appropriate adjustments are then made over a three-year period. The likelihood of the need for excess premiums is remote, given the claims history of the cities involved and the length of time necessary to settle large claims. Generally, individual claims in excess of the self-insured amount for workers compensation and general liability fall under the insurance policies purchased by the City.

The City joined the California Joint Powers Insurance Authority in November 1987 to provide for the transfer of risk for general liability. The limit of insurance provided is \$50 million, combined single limit occurrence. The Authority is a pool of cities which has formed an insurance group. Each member city pays into the pool annual deposits. In addition, various risk control techniques, including annual safety audits and employee accident prevention training, have been implemented to minimize loss.

The City has all risk property insurance as indicated on a list of scheduled property. The City also has environmental liability insurance and a fidelity blanket bond. The City enrolled in the Authority's Workers' Compensation Insurance Program in April 1991. The coverage excludes CETA employees and provides statutory benefits for all remaining City employees plus \$10 million employer's liability. All claims are investigated, valued, reserved, defended and/or settled in accordance with generally accepted insurance industry practices.

### **Capital Improvement Program Policy**

Capital project proposals should include complete, reliable, and attainable cost estimates. Based upon a thorough analysis of the project, project cost estimates for the Five-Year Capital Improvement Plan will vary in reliability depending upon whether they are to be undertaken in the first or fifth year of the Plan. Project estimates for the Five-Year Capital Improvement Plan should include the basis on which the project costs were prepared (conceptual design, master plan, etc.), and the relative reliability of those estimated costs.

Capital project proposals should include a comprehensive resource plan. This plan should include the amount and type of resources required, and the funding and financing strategies to be employed. The specific fund and timing should be outlined. The plan should indicate resources needed to complete any given phase of a project in addition to the total project. The City Manager's Office is responsible and accountable for providing Council with an accurate, comprehensive resource plan.

Changes in project estimates for the comprehensive resource plan should be fully reported to the City Council for review and approval. Project proposals should indicate the project impact on the operating budget. Each project that is proposed in any year of the 5-year Capital Improvement Program shall have an estimate of the costs for furniture, fixtures, equipment, and technology and the annual operations and maintenance costs in the appropriate year of the Operating Budget or in the Five Year Forecast and Revenue Projections.

During the annual Capital Budget process for multi-year budgeted projects, the City Manager will provide the Council with more information regarding the project including the original budget, budget addendums, and the projected schedule in spreadsheet format.

At the time of award of the construction contract, each project shall include reasonable provision for contingencies. At the time of award of the construction contract, each project shall include reasonable provisions for furniture, fixtures, equipment, and technology that are separately identified in a line item or items in the construction budget and those costs shall be noted in the staff report to Council. At the time of award of the construction contract, each project's estimated annual operating and maintenance costs shall be identified in the staff report to the Council and shall be included in the Operating Budget or in the Five Year Forecast and Revenue Projections for projects expected to be completed after the end of the budget year.

The City Administration shall seek ways of ensuring that administrative costs of carrying out the Capital Improvement Program are kept at appropriate levels. The annual Capital Budget shall include only those projects that can reasonably be accomplished in the indicated timeframe. Multi-year budgeting of projects shall be used to ensure a reasonable timeframe for projecting costs. The detail sheet for each budgeted capital project should include a projected schedule.

Public participation in the Capital Improvement Program is a priority concern for the City. Among the activities conducted to address this need are the following:

- The Capital Improvement Plan shall be provided to the City Council in a timely manner as required by the City Charter to allow for Council members to review the proposal with constituents before it is considered for adoption.
- City Council budget review study sessions on the Capital Improvement Plan shall be open to the public and advertised sufficiently in advance of the meetings to allow for the public attendance.
- Prior to the adoption of the Capital Improvement Plan, the City Council shall hold noticed public meetings to provide an opportunity for residents to express their opinions on the proposed plan.
- All projects included in the Capital Improvement Program shall be consistent with the City's General Plan. The goals and policies within the General Plan relating to community development, housing, services and facilities, cultural and recreational resources, natural resources, and hazards should be followed in the development of the Capital Improvement Plan. The General Plan service level goals will be clearly stated in the Capital Improvement Program.
- Capital projects shall be financed to the greatest extent possible through user fees and benefit districts where construction of the project results in direct benefit to users.

- The Council will annually review and establish criteria for measuring proposed capital improvement projects. Among the factors that will be considered for priority ranking are the following:
  - Projects that have a positive impact on the operating budget, such as reduced expenditures or increased revenues.
  - Projects that are programmed in the Five-Year Operating Budget Forecast.
  - Projects that can be completed or significantly advanced during the Five-Year Capital Improvement Plan.
  - Projects that can realistically be accomplished during the year they are scheduled.
  - Projects that implement prior Council-adopted reports and strategies.

## Strategic Planning 2014 City Council issues

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As part of the strategic planning effort in Indian Wells, the City Council develops a list of current issues important to the community. The list is maintained throughout the year to keep track of the many issues that come to City Council. The list is developed by the City Council and helps to ensure that everyone's projects and concerns are discussed when evaluating current realities or establishing future scenarios.

- City Charter Review
- Club Drive Buildings
- Code Enforcement – Property Owner Cards
- Healthy Cities Initiative
- Highlight Health services available
- Highway 111 Landscaping Issues
- Homeless Program Funding Process
- Humana Challenge
- Master Plan north east section of City
- Performance incentive IWGR key employees
- Policy and Procedures Manual Review
- Resident Events
- Vacant Lot east of Miramonte

70

187

8A

CC/HA ACTION \_\_\_\_\_ MTG. DATE: 2-6-14  
APPROVED  DENIED \_\_\_\_\_ REC/FILE \_\_\_\_\_ CONT. \_\_\_\_\_  
OTHER \_\_\_\_\_  
VOTE: YES 5 NO 0 ABSTAIN \_\_\_\_\_

## ***Successor Agency to RDA***

***Staff Report – Finance***

***February 6, 2013***

### **Adopt Resolution Approving Recognized Obligation Payment Schedule 14-15 A for July 1 through December 31, 2014 And Finding this Action is Exempt under CEQA**

#### **RECOMMENDATIONS:**

Successor Agency **FINDS** that this action is exempt under the California Environmental Quality Act pursuant to Section 15060(c)(3) the activity is not a project as defined in Section 15378; and

**ADOPTS** Resolution Bill No. SA 2014-02 approving and adopting the Recognized Obligation Payment Schedule pursuant to Health and Safety Code section 34117(l).

#### **DISCUSSION:**

##### Background:

Pursuant to AB 1X 26 as modified by AB 1484, one of the responsibilities of the successor agency is to prepare a draft of the Recognized Obligation Payment Schedule ("ROPS") and submit it to the County Administrative Officer, the County Auditor-Controller, and Department of Finance at the same time that they submit it to the oversight board for approval. Following approval of the ROPS by the oversight board, the successor agency must submit that approved ROPS to the County Auditor-Controller, the State Controller, and the State Department of Finance. The ROPS approved by the oversight board is also to be posted on the City's website.

##### Analysis:

One of the responsibilities of the City, as successor agency, is to prepare a Recognized Obligation Payment Schedule ("ROPS"), which sets forth the nature, amount, and source(s) of payment of all "enforceable obligations" of the Agency (as defined by law) to be paid by the successor agency after the Agency's dissolution, covering the forward-looking six month fiscal period. The Successor Agency can only make payments that are authorized by the State Department of Finance which are listed on the ROPS.

The City, as successor agency, has prepared the draft of the ROPS covering the period from July 1, 2014 through December 31, 2014. The ROPS needs to be submitted to numerous agencies, and submitted to the oversight board for approval. The final approved ROPS must be then submitted no later than March 3, 2014.

Conclusion:

Pursuant to Health and Safety Code section 34177(l)(2), the City, as successor agency, is required to prepare a draft of the ROPS covering the period from July 1, 2014 through December 31, 2014. This draft is submitted to the oversight board for approval and at the same time submitted to the County Administrative Officer, the County Auditor-Controller and the Department of Finance. AB 1X 26 originally required that the ROPS be submitted to an external auditor for review and approval, but that requirement was recently eliminated by the adoption of AB 1484. Once the ROPS is submitted to and duly approved by the oversight board ("Approved ROPS"), that Approved ROPS is again submitted to the County Auditor-Controller, the State Controller's office and the State Department of Finance, and posted on the City's website. The Approved ROPS must be submitted to those parties no later than March 3, 2014.

**FISCAL IMPACT:**

The Successor Agency is requesting funding in the amount of \$7,103,647 during this ROPS period. Funding will be applied as follows: (a) \$6,896,453 in principal and interest payments will be paid on September 1, 2014 to bond holders and (b) \$206,894 for Administrative Costs.

**ATTACHEMENT:**

1. Resolution Bill SA No. 2014-02

**RESOLUTION BILL SA NO. 2014-02**

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF INDIAN WELLS, CALIFORNIA, APPROVING AND ADOPTING A DRAFT OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177(I)**

**WHEREAS**, pursuant to Health and Safety Code section 34173(d), the City of Indian Wells ("Successor Agency") elected to become the successor agency to the Indian Wells Redevelopment Agency by City Council Resolution No. 2012-03 on January 12, 2012; and

**WHEREAS**, Health and Safety Code section 34177(l)(2) requires the Successor Agency to prepare a draft of the recognized obligation payment schedule ("ROPS") covering the six month period from July 1, 2014 through December 31, 2014; and

**WHEREAS**, Health and Safety Code section 34177(l)(2) requires the Successor Agency to submit a copy of the ROPS to the county administrative office, the county auditor controller, and the Department of Finance at the same time that the Successor Agency submits the ROPS to the oversight board for its approval; and

**WHEREAS**, upon approval by the Oversight Board, the Successor Agency is required to submit a copy of the approved ROPS ("Approved ROPS") to the Riverside County Auditor-Controller, the California State Controller, and the State of California Department of Finance, and post the Approved ROPS on the Successor Agency's website; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE**, the City Council of the City of Indian Wells, serving as the Successor Agency to the dissolved Indian Wells Redevelopment Agency **RESOLVES** as follows:

**SECTION 1.** The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

**SECTION 2.** The approval of the draft of the ROPS through this Resolution does not commit the Successor Agency to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The City Clerk, acting on behalf of the Successor Agency, is authorized and directed to file a Notice of Exemption with the appropriate official of the County of Riverside, California, within five (5) days following the date of adoption of this Resolution.

**SECTION 3.** The Successor Agency **APPROVES** and **ADOPTS** the draft of the ROPS, in substantially the form attached to this Resolution as Exhibit "A", as required by Health and Safety Code Section 34177.

**SECTION 4.** The City Manager, acting on behalf of the Successor Agency, is hereby authorized and directed to take any action necessary to carry out the purposes of this Resolution and comply with applicable law regarding the draft of the ROPS, including submitting the draft of the ROPS to the Riverside County Auditor-Controller, or its designee, the County Administrative Officer for Riverside County, the Department of Finance, and the Successor Agency's oversight board, and following approval of the ROPS by the oversight board, submitting the Approved ROPS to the Riverside County Auditor-Controller, the California State Controller, and the State of California Department of Finance, and posting the Approved ROPS on the Successor Agency's website.

**SECTION 5.** This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** by the Successor Agency to the Redevelopment Agency of the City of Indian Wells, California, at an adjourned regular meeting held on the 6<sup>th</sup> day of February, 2014.

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**TED J. MERTENS**  
**MAYOR**

**CERTIFICATION FOR RESOLUTION BILL SA NO. 2014-02**

I, Wade G. McKinney, City Clerk of the City of Indian Wells, California, **DO HEREBY CERTIFY** that the whole number of the members of the Successor Agency to the Redevelopment Agency of the City of Indian Wells is five (5); that the above and foregoing Resolution was duly and regularly passed and adopted at an adjourned regular meeting of the Successor Agency to the Redevelopment Agency of the City of Indian Wells on the 6<sup>th</sup> day of February, 2014, by the following vote:

AYES:  
NOES:

**ATTEST:**

**APPROVED AS TO FORM:**

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**WADE G. MCKINNEY  
CITY MANAGER**

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**STEPHEN P. DEITSCH  
CITY ATTORNEY**

**EXHIBIT "A"**

**Recognized Obligation Payment Schedule (ROPS 14-15A) - Summary**

Filed for the July 1, 2014 through December 31, 2014 Period

**Name of Successor Agency:** Indian Wells  
**Name of County:** Riverside

<u>Current Period Requested Funding for Outstanding Debt or Obligation</u>	<u>Six-Month Total</u>
<b>Enforceable Obligations Funded with Non-Redevelopment Property Tax Trust Fund (RPTTF) Funding</b>	
<b>A Sources (B+C+D):</b>	<b>\$ 1,018,139</b>
B Bond Proceeds Funding (ROPS Detail)	-
C Reserve Balance Funding (ROPS Detail)	1,018,139
D Other Funding (ROPS Detail)	-
<b>E Enforceable Obligations Funded with RPTTF Funding (F+G):</b>	<b>\$ 7,103,347</b>
F Non-Administrative Costs (ROPS Detail)	6,896,453
G Administrative Costs (ROPS Detail)	206,894
<b>H Current Period Enforceable Obligations (A+E):</b>	<b>\$ 8,121,486</b>

<u>Successor Agency Self-Reported Prior Period Adjustment to Current Period RPTTF Requested Funding</u>	
I Enforceable Obligations funded with RPTTF (E):	7,103,347
J Less Prior Period Adjustment (Report of Prior Period Adjustments Column S)	-
<b>K Adjusted Current Period RPTTF Requested Funding (I-J)</b>	<b>\$ 7,103,347</b>

<u>County Auditor Controller Reported Prior Period Adjustment to Current Period RPTTF Requested Funding</u>	
L Enforceable Obligations funded with RPTTF (E):	7,103,347
M Less Prior Period Adjustment (Report of Prior Period Adjustments Column AA)	-
<b>N Adjusted Current Period RPTTF Requested Funding (L-M)</b>	<b>7,103,347</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177(m) of the Health and Safety code, I  
hereby certify that the above is a true and accurate Recognized  
Obligation Payment Schedule for the above named agency.

_____	_____
Name	Title
/s/ _____	_____
Signature	Date

101  
8A



**Recognized Obligation Payment Schedule (ROPS) 14-15A - Report of Cash Balances**  
(Report Amounts in Whole Dollars)

Pursuant to Health and Safety Code section 34177(I), Redevelopment Property Tax Trust Fund (RPTTF) may be listed as a source of payment on the ROPS, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.

A	B	C	D	E	F	G	H	I	
		<b>Fund Sources</b>							
		<b>Bond Proceeds</b>		<b>Reserve Balance</b>		<b>Other</b>	<b>RPTTF</b>		
	<b>Cash Balance Information by ROPS Period</b>	Bonds Issued on or before 12/31/10	Bonds Issued on or after 01/01/11	Prior ROPS period balances and DDR balances retained	Prior ROPS RPTTF distributed as reserve for next bond payment	Rent, Grants, Interest, Etc.	Non-Admin and Admin	<b>Comments</b>	
<b>ROPS 13-14A Actuals (07/01/13 - 12/31/13)</b>									
1	<b>Beginning Available Cash Balance (Actual 07/01/13)</b> Note that for the RPTTF, 1 + 2 should tie to columns J and O in the Report of Prior Period Adjustments (PPAs)				8,835,255			This beginning Balance ties to GL and includes ROPS 13/14 A received in June 2013	
2	<b>Revenue/Income (Actual 12/31/13)</b> Note that the RPTTF amounts should tie to the ROPS 13-14A distribution from the County Auditor-Controller during June 2013					2,427			
3	<b>Expenditures for ROPS 13-14A Enforceable Obligations (Actual 12/31/13)</b> Note that for the RPTTF, 3 + 4 should tie to columns L and Q in the Report of PPAs				1,015,799		6,758,888	\$1,015,829 came from prior reserves	
4	<b>Retention of Available Cash Balance (Actual 12/31/13)</b> Note that the RPTTF amount should only include the retention of reserves for debt service approved in ROPS 13-14A								
5	<b>ROPS 13-14A RPTTF Prior Period Adjustment</b> Note that the RPTTF amount should tie to column S in the Report of PPAs.	No entry required							
6	<b>Ending Actual Available Cash Balance</b> C to G = (1 + 2 - 3 - 4), H = (1 + 2 - 3 - 4 - 5)	\$ -	\$ -	\$ -	\$ 7,819,456	\$ 2,427	\$ (6,758,888)		
<b>ROPS 13-14B Estimate (01/01/14 - 06/30/14)</b>									
7	<b>Beginning Available Cash Balance (Actual 01/01/14)</b> (C, D, E, G = 4 + 6, F = H4 + F4 + F6, and H = 5 + 6)	\$ -	\$ -	\$ -	\$ 7,819,456	\$ 2,427	\$ (6,758,888)		
8	<b>Revenue/Income (Estimate 06/30/14)</b> Note that the RPTTF amounts should tie to the ROPS 13-14B distribution from the County Auditor-Controller during January 2014						2,718,320	This is ROPS 13-14 B received from the County in January 2014	
9	<b>Expenditures for 13-14B Enforceable Obligations (Estimate 06/30/14)</b>						2,763,177		
10	<b>Retention of Available Cash Balance (Estimate 06/30/14)</b> Note that the RPTTF amounts may include the retention of reserves for debt service approved in ROPS 13-14B								
11	<b>Ending Estimated Available Cash Balance (7 + 8 - 9 -10)</b>	\$ -	\$ -	\$ -	\$ 7,819,456	\$ 2,427	\$ (6,803,745)	<b>8 A</b>	



**INDIAN WELLS GOLF RESORT  
SELECTED DATA COMPARISON AS OF JANUARY 31, 2014**

	ACTUAL MONTH	ADR	PRIOR YEAR MONTH	ADR	VAR TO PY	ADR VAR
<b>ROUNDS</b>						
18HOLE	653	145.32	199	155.09	454	(9.77)
RESORT ROUNDS	604	122.76	727	138.23	(123)	(15.48)
TOURNAMENT ROUNDS	982	109.61	1,618	109.35	(636)	0.26
PLATINUM CARDHOLDER ROUNDS	507	110.62	413	109.73	94	0.89
WHOLESALE ROUNDS	485	116.12	152	120.63	333	(4.51)
RESIDENT ROUNDS	2,373	36.10	2,142	35.06	231	1.04
RESIDENT GUEST ROUNDS	933	77.50	1,015	64.82	(82)	12.68
ALL OTHER ROUNDS	1,874	53.37	1,856	62.01	18	(8.64)
<b>TOTAL ROUNDS</b>	<b>8,411</b>	<b>76.93</b>	<b>8,122</b>	<b>77.31</b>	<b>289</b>	<b>(0.38)</b>

					% VAR
<b>REVENUES</b>					
18HOLE	94,894		30,863		207.5%
RESORT ROUNDS	74,145		100,496		-26.2%
TOURNAMENT ROUNDS	107,639		176,929		-39.2%
PLATINUM CARDHOLDER ROUNDS	56,085		45,318		23.8%
WHOLESALE ROUNDS	56,318		18,335		207.2%
RESIDENT ROUNDS	85,656		75,090		14.1%
RESIDENT GUEST ROUNDS	72,310		65,795		9.9%
ALL OTHER ROUNDS	100,019		115,099		-13.1%
<b>TOTAL GOLF FEES</b>	<b>647,066</b>		<b>627,925</b>		<b>3.0%</b>

<b>MERCHANDISE</b>						
REVENUE	121,717	14.47	122,192	15.04	(475)	(0.57)

**PLAN**  
**INCREASE MORNING ROUNDS**  
**CHANGE PLATINUM CARD**  
**RESORT ROUNDS**  
**RESIDENT GUEST RATE**  
**WHOLESALE ROUNDS**

NA

At Dais, Item *Perchedly*  
*Conrad's*

