

**CITY OF INDIAN WELLS  
PROFESSIONAL SERVICES AGREEMENT**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 12<sup>th</sup> day of April, 2006, by and between the **City of Indian Wells**, a charter city organized under the Constitution and laws of the State of California with its principal place of business at 44-950 Eldorado Drive, Indian Wells, California 92210-7497 ("City") and Quality Code Publishing, LLC, a with its principal place of business at 2100 Westlake Avenue North, Suite 106, Seattle, Washington 98109 ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing codification services to public clients, is licensed to conduct business in the State of Washington and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the codification of ordinances in the City of Indian Wells Municipal Code and maintenance and update of the Municipal Code on the Consultant's website with a link to the City's website ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

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

3.1.2 Term. The term of this Agreement shall be from April 12, 2006 until terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

### **3.2 Responsibilities of Consultant.**

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

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Nancy Helmer, President.

3.2.5 City's Representative. The City hereby designates the Chief Deputy City Clerk, 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 Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

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

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

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

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence/\$4,000,000 in the aggregate, for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident/\$1,000,000 in the aggregate, for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations

performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving 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.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The tasks set forth in Exhibit "C" shall be performed only after receipt by Consultant of written authorization for such tasks from City's Chief Deputy City Clerk. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement.

Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 [Intentionally Omitted]

### **3.4 Accounting Records.**

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

### **3.5 General Provisions.**

#### 3.5.1 Termination of Agreement.

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

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

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

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

**Consultant:**

Nancy Helmer, President  
Quality Code Publishing, LLC  
2100 Westlake Avenue North, Suite 106  
Seattle, Washington 98109

**City:**

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

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.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

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

the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

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

3.5.5 [INTENTIONALLY OMITTED]

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

3.5.7 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. This Agreement may only be modified by a writing signed by both Parties.

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

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

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

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees,

hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

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

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

3.5.15 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.

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

3.5.17 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.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City's Minority

Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

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

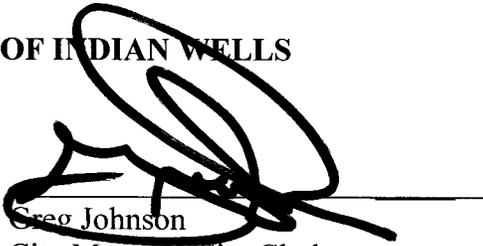
3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

### 3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

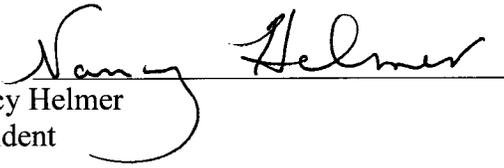
CITY OF INDIAN WELLS

By:

  
Greg Johnson  
City Manager/City Clerk

QUALITY CODE PUBLISHING, LLC

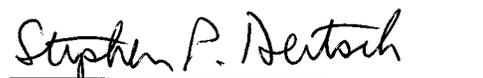
By:

  
Nancy Helmer  
President

Attest:

  
City Clerk

Approved as to Form:

  
Best Best & Krieger LLP  
City Attorney

## EXHIBIT "A"

# SCOPE OF SERVICES

### PROFESSIONAL SERVICES PROPOSAL

Quality Code Publishing, hereinafter referred to as "QCP," hereby agrees to research, edit, codify and publish the ordinances of the City of Indian Wells, California, hereinafter referred to as "City," according to the following terms and conditions:

#### PART I - SCOPE OF SERVICES

Upon receipt of the necessary materials from the City, QCP shall:

1. **COMPREHENSIVE LEGAL REVIEW (OPTIONAL).**
  - 1.1. **Materials.** QCP's attorneys will carefully organize and review the City's materials, including: the City's Charter, if any; all existing ordinances of a general and permanent nature or which impose a fine, penalty or forfeiture; and the City's current code. The City will provide a legible copies of all materials necessary for the review.
  - 1.2. **Charter Comparison.** If applicable, the code and ordinances will be compared against the Charter and Charter amendments, if any, to identify conflicts or discrepancies between provisions.
  - 1.3. **Statutory and Case Law Comparison.** Every ordinance and code provision will be compared against state statutes and current federal and state case laws to identify conflicts, inconsistencies, preemptions and other potential problems.
  - 1.4. **Internal Comparison.** The code and ordinances will be examined for internal discrepancies such as outdated fees, vague or awkward language, inaccuracies, duplications and conflicts with other ordinances.
  - 1.5. **Report.** The results of the above will be presented to the City in a written report for review at the convenience of the City's representatives. Where conflicts, problems or inconsistencies are noted, QCP's attorneys will include relevant statutory or case citations, plus specific recommendations for corrective measures. The City Attorney will review the report in preparation for a conference with QCP's representative.
  - 1.6. **Production Schedule.** The final report will be delivered to the City three (3) months after authorization to proceed has been received from the City.
2. **REPUBLICATION.** The code will be reformatted and republished as follows.
  - 2.1. **Editorial Work.** The code will be carefully edited for proper code style, grammar and punctuation, as well as for numerical and editorial consistency. Where necessary, the language of existing ordinances will be converted into concise, modern and proper language. No substantive changes will be made in the language of the code without the authorization of the City.
  - 2.2. **Incorporate Ordinances.** QCP's experienced editors will incorporate into the code, in the appropriate places, all ordinances enacted subsequent to the last codified ordinance.

- The amended or repealed provisions will be removed and the new provisions inserted. There is an additional charge for these pages as listed in Part II Sec. 8 of this proposal.
- 2.3. **History Notes.** Each code section will include a notation showing the origin of the section, and any amendments made thereto.
  - 2.4. **Cross references and footnotes.** Cross references will be prepared to tie together related sections of the new code. Proper explanation will also be made in the form of footnotes to relevant provisions of the code.
  - 2.5. **Charter references.** Charter references will be prepared to tie together related sections of the Charter and new code.
  - 2.6. **Table of Contents.** The code will include a general Table of Contents listing the titles contained therein; each Title will contain a table showing the chapters it includes; each chapter will list the number and catchlines of the sections it includes.
  - 2.7. **Statutory Reference Table.** This lists state laws which pertain to, or affect, the City's local code provisions.
  - 2.8. **Ordinance list.** Tables showing the disposition of each City ordinance will be prepared and included in the code volume. Repealed and omitted special ordinances will be so noted.
  - 2.9. **Index.** QCP's experienced legal indexers will prepare a new general alphabetical subject index, referencing each section of the code. Additionally we will use the terminology of the City's ordinances, common synonyms that our indexers have developed over 20 years' experience and local terminology or "buzz-words" used by the City. Our indexes are specifically designed to remain accurate after the code is supplemented, with minimal reprinting.
  - 2.10. **Proofreading.** QCP will proofread the entire code for accuracy. QCP is responsible for the typographical correctness of the code. Any errors attributable to QCP will be corrected at no charge to the City.
  - 2.11. **Stock.** The code will be printed on 20 lb. white bond paper or equivalent. The City may elect to have the code printed on one side of each sheet of paper, or on both sides. (Note: a page is one side of a sheet of paper).
  - 2.12. **Page Format.** The page style will be consistent with the format chosen by the City: 8½ x 11 inches, one or two-column (samples attached).
  - 2.13. **Printing.** QCP will print four (4) copies as specified by the City. Additional copies of the entire code, or portions thereof, may be ordered by the City as they are needed.
  - 2.14. **Electronic Copy of Code on CD-ROM.** QCP will provide the City with one copy of the revised code on CD-ROM in MS WORD after each supplement. RTF files can also be provided upon request.
  - 2.15. **Production Schedule.** Time is of the essence. It is the intention of the company, with the cooperation of the City, to deliver the republished codes to the City within four (4) months of the receipt of codification material from the City. Should delivery be delayed

because of the City's delay in performing its duties according to this contract, the Company shall have the right to increase the final cost of the code to compensate for any increase in labor, materials or overhead costs.

3. **SALE OF CODES.** The City has exclusive rights to sell copies of the completed codes and looseleaf supplements.
4. **SUPPLEMENT SERVICES.** QCP will provide ongoing updates for the City, on a regular schedule, as directed by the City. Ordinances will be forwarded to QCP as they are adopted. Prior to beginning a regularly scheduled supplement, QCP will contact the City to confirm that QCP has received all the necessary ordinances. QCP's editors will prepare each supplement by completing the following steps:
  - 4.1. **Editing.** QCP will organize the new ordinances by subject and will insert all amendments into their proper places in the code text. Provisions that have been repealed will be deleted from the code text.
  - 4.2. **Update Related Parts.** All history notes, tables, cross-references and index entries will be updated to reflect the new material.
  - 4.3. **Publish Supplement Pages.** The revised pages will be typeset to match the style and format of the code. The supplement will be printed in the quantity specified by the City.
  - 4.4. **Insertion Guide.** Each supplement will include a page with instructions for inserting the new pages and removing obsolete ones.
  - 4.5. **Electronic Copy of Code on CD-ROM.** QCP will provide the City with one copy of the revised code on CD-ROM in MS WORD after each supplement. RTF files can also be provided upon request.
  - 4.6. **Frequency.** The City may choose to supplement the code quarterly, semi-annually, annually, or on an "as-needed" basis. The City may change the supplement interval at any time. Frequency of supplementation does not affect the supplement rate.
  - 4.7. **Supplement Turn-around time. (Production Schedule)** Time is of the essence. For the laws of the City to be effective, they must be accessible and easily available to the public. It is the intention of the company, with the cooperation of the City, to deliver each regularly scheduled supplement to the City within 30-45 days after the established supplement cutoff date.
  - 4.8. **Termination.** The City may terminate the supplement service by canceling in writing at least 60 days prior to the editorial cutoff date for any regularly scheduled supplement.
5. **ELECTRONIC PUBLISHING AND INTERNET SERVICES.** QCP will create a searchable Internet database for posting on QCP's website with a link to the City's site. We will provide all technical support needed to establish and maintain the Internet link. As the code is updated, we will post the changes to your code on the Internet at the same time that we send your printed supplements. Our online codes feature a robust full-text search engine utilizing advanced Boolean operators, wildcards, exact-phrase searching, and allow control over how results are

ranked. Search results are displayed by code section, and search results feature search-term highlighting. A simplified user interface is also provided to allow the less-advanced user to easily create and combine "and", "or", and phrase search expressions. Our on-line service provides the user with the option of viewing and printing the code by either chapter or section. An example of our Internet services can be viewed at [www.codemanage.com/laquinta/](http://www.codemanage.com/laquinta/). No license is required for the browse and search options.

Our Internet search facility, as well as our Web storage and delivery system, is custom-tailored to municipal code publication. The software is built upon the MySQL database server, the world's most popular open-source database software. MySQL is installed on more than 5 million web servers worldwide, and is used by organizations such as The Associated Press, Google and NASA. MySQL is renowned for its high speed, reliability, and compliance with industry standards.

5.1. **CODEALERT.** CodeAlert is an on-demand updating service that is designed to work in conjunction with the Internet copy of the City's Code. CodeAlert notifies the code user that a code section has been amended and provides a list of ordinances that have been passed, but not yet incorporated into the code. Sections of the code that have been affected by an adopted ordinance will contain a warning at the beginning of the section with a link to both the ordinance and the CodeAlert page. This service assures the viewer the most accurate, up-to-date version of the code, no matter how frequently you choose to supplement.

5.2. **Code on CD-ROM.** Subscribers to our electronic publishing services will receive an electronic copy of the code on CD-ROM in a non-proprietary format such as PDF or HTML and shall include software for search and retrieval of the code of ordinances. As the code is updated, an updated CD will be sent to you along with the printed supplements.

6. **BINDERS AND TABBED DIVIDER PAGES. (Optional)** If requested, QCP can provide customized, D-Ring or 3-Ring Binders. Binders are available in a selection of colors and will be imprinted on the cover and spine with an appropriate title. The City may also add a seal, logo or other artwork to the binder covers. Other binder styles, including heavy duty, expandable post binders, in any quantity, are also available. Customized tabbed divider pages designating the individual titles are also available.

**EXHIBIT "B"**

**SCHEDULE OF SERVICES**

**NOT APPLICABLE**

**EXHIBIT "C"**  
**COMPENSATION**

**INDIAN WELLS MUNICIPAL CODE SERVICE**

**ESTIMATED COSTS FOR CODIFICATION SERVICES**

**REPUBLICATION** (assumes the code is 1000 pages no supplement pages):

1000 republished pages @ \$11.00 per page (4 copies) ..... \$11,000.00<sup>1</sup>

**ELECTRONIC PUBLISHING & INTERNET SERVICES:**

Internet one-time setup fee..... \$75.00

Internet storage and maintenance on QCP's website (annual charge based on \$40/month)..... \$480.00

Copy of the Code on CD-ROM ..... \$25.00

**TOTAL REPUBLICATION COST & ANNUAL STORAGE & MAINTENANCE ..... \$11,580.00**

LEGAL REVIEW ..... \$2,950.00

**TOTAL COST INCLUDING LEGAL REVIEW ..... \$14,530.00**

**ESTIMATED ANNUAL SUPPLEMENT COSTS (based on semi-annual supplements with CodeAlert Service)** The following figures assume two supplements per year, 50 pages each supplement.

Item	Unit Cost	Quantity	Total Cost
Supplement per page	\$17.00	50 pages/supp	\$850.00
Internet Updating:			
1 <sup>st</sup> 50 pages @ \$75.00			\$75.00
Over 50 pages			0.00
CD-ROM			\$25.00
Shipping & handling			\$15.00
<b>Sub-Total – per supp</b>			<b>\$965.00</b>
<b>Total annual service without CodeAlert (two supplements per year)</b>			<b>\$1,930.00</b>
Plus Optional service:			
CodeAlert – monthly	\$25.00	12 months	\$300.00
CodeAlert – per ordinance	\$30.00	20 ords/year	\$600.00
<b>Total Annual Service with CodeAlert</b>			<b>\$2,830.00<sup>2</sup></b>

**TOTAL FIRST YEAR COST** (including all of the above services) ..... **\$17,360.00**

<sup>1</sup> **NOTE:** If the City has ordinances that have not been codified, which they would like added to the code at the time of republication, there will be an **additional charge of \$6.00 per supplement page**. Once I have received the current code and any ordinances, I can give you a page estimate for the supplement pages. If the City does not have any ordinances they would like added, there would be no additional charges.

<sup>2</sup> **NOTE:** Future estimated annual supplement service, please add \$480.00 for Annual Internet Storage & Maintenance.