INDIAN WELLS
CALIFORNIA

AMENDMENT NO. 6
TO THAT CERTAIN AGREEMENT BY AND BETWEEN CITY OF INDIAN WELLS AND ONE EIGHTY MARKETING INC DBA GRAPHTEK ADVERTISING & DESIGN FOR GRAPHIC DESIGN, PRINT MANAGEMENT, AND RESIDENT COMMUNICATION SERVICES FOR INDIAN WELLS

This Amendment No. 6 ("Amendment No. 6") to that certain City of Indian Wells Agreement for Graphic Design, Print Management, and Resident Communication Services by and between **One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design, a California Corporation ("Consultant")** and the **City of Indian Wells ("City"),** dated **July 1st, 2007** ("Agreement") is entered into by and between **Consultant** and **City** on this **1st** day of **July, 2012**. The **Consultant** and the **City** agree as follows:

Section 1. The term of the Agreement is extended for the period of July 1, 2012 through the date that the Agreement is terminated upon notice of termination as permitted by the Agreement ("Extended Term").

Section 2. For each year of the Extended Term, the Consultant shall receive compensation in the amount of Fifty-Nine Thousand Dollars and No Cents ($59,000) for all Services set forth in Exhibit "A" of the Agreement.

Section 3. The terms and provisions of the Agreement shall remain unchanged and in full force and effect except insofar as they are amended pursuant to this Amendment No. 6.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Amendment No. 6 as of the date first set forth hereinabove.

CITY OF INDIAN WELLS

By: _____
Roderick J. Wood, Interim City Manager

ONE EIGHTY MARKETING INC. DBA GRAPHTEK ADVERTISING & DESIGN.

By: _____
Mike Cheley, Owner

Attest:

_____
Anna Grandys, Chief Deputy City Clerk

_____
Nancy Samuelson, Marketing/Community Relations

Approved as to Form:

By: _____
Stephen P. Deitsch, City Attorney

AMENDMENT NO. 5
TO THAT CERTAIN AGREEMENT
BY AND BETWEEN CITY OF INDIAN WELLS AND
ONE EIGHTY MARKETING INC DBA GRAPHTEK ADVERTISING & DESIGN FOR GRAPHIC DESIGN, CITY WEBSITE, PRINT MANAGEMENT, AND RESIDENT COMMUNICATION SERVICES FOR INDIAN WELLS.

This Amendment No. 5 ("Amendment No. 5") is entered into this first day of July, 2011, by and between One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design, a California corporation (the "Consultant") and the City of Indian Wells, a municipal corporation and charter city of the State of California ("City") with respect to that certain Professional Services Agreement by and between the Consultant and the City dated July 1, 2007, as previously amended (the "Agreement"). The Consultant and the City agree as follows:

Section 1. The term of the Agreement is extended for the period of July 1, 2011 through June 30, 2012 (the "Extended Term").

Section 2. For the Extended Term, the Consultant shall perform the Services as set forth in Exhibit "A" of the Agreement, and shall receive compensation therefor in an amount not to exceed Seventy-Five Thousand Dollars and No Cents ($75,000.00) for all services except for newsletter services, plus Thirty-Five Thousand Dollars and No Cents ($35,000) which the Consultant and the City understand and agree shall be deemed to pertain to and pay for only newsletter services provided by the Consultant.

Section 3. The terms and provisions of the Agreement shall remain in full force and effect, except to the extent they are amended by this Amendment No. 5.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Amendment No. 5 as of the date first set forth hereinabove.

CITY OF INDIAN WELLS

By: _____
Greg Johnson, City Manager

Attest:

_____, Chief Deputy
City Clerk

Approved as to Form:

Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

One Eighty Marketing Inc
DBA Graphtek Advertising & Design

By: _____
Michael Cheley, Owner

AMENDMENT NO. 4
TO THAT CERTAIN AGREEMENT
BY AND BETWEEN CITY OF INDIAN WELLS AND
ONE EIGHTY MARKETING INC DBA GRAPHTEK ADVERTISING & DESIGN FOR GRAPHIC DESIGN, CITY WEBSITE, PRINT MANAGEMENT, AND RESIDENT COMMUNICATION SERVICES FOR INDIAN WELLS.

This Amendment No. 4 ("Amendment No. 4") is entered into this first day of July, 2010, by and between One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design, a California corporation (the "Consultant") and the City of Indian Wells, a municipal corporation and charter city of the State of California ("City") with respect to that certain Professional Services Agreement by and between the Consultant and the City dated July 1, 2007, as previously amended (the "Agreement"). The Consultant and the City agree as follows:

Section 1. The term of the Agreement is extended for the period of July 1, 2010 through June 30, 2011 (the "Extended Term").

Section 2. For the Extended Term, the Consultant shall perform the Services as set forth in Exhibit "A" of the Agreement, and shall receive compensation therefor in an amount not to exceed Seventy-Five Thousand Dollars and No Cents ($75,000.00) for all services except for newsletter services, plus Thirty-Five Thousand Dollars and No Cents ($35,000) which the Consultant and the City understand and agree shall be deemed to pertain to and pay for only newsletter services provided by the Consultant.

Section 3. The terms and provisions of the Agreement shall remain in full force and effect, except to the extent they are amended by this Amendment No. 4.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Amendment No. 4 as of the date first set forth hereinabove.

CITY OF INDIAN WELLS

By: _____
Greg Johnson, City Manager

Attest:

_____, Chief Deputy
City Clerk

Approved as to Form:

Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

One Eighty Marketing Inc
DBA Graphtek Advertising & Design

By: _____
Michael Cheley, Owner

AMENDMENT NO. 3
TO THAT CERTAIN AGREEMENT
BY AND BETWEEN CITY OF INDIAN WELLS AND
ONE EIGHTY MARKETING INC DBA GRAPHTEK ADVERTISING & DESIGN FOR GRAPHIC DESIGN, CITY WEBSITE, PRINT MANAGEMENT, AND RESIDENT COMMUNICATION SERVICES FOR INDIAN WELLS.

This Amendment No. 3 ("Amendment No. 3") is entered into this first day of July, 2009, by and between One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design, a California corporation (the "Consultant") and the City of Indian Wells, a municipal corporation and charter city of the State of California ("City") with respect to that certain Professional Services Agreement by and between the Consultant and the City dated July 1, 2007, as previously amended (the "Agreement"). The Consultant and the City agree as follows:

Section 1. The term of the Agreement is extended for the period of July 1, 2009 through June 30, 2010 (the "Extended Term").

Section 2. For the Extended Term, the Consultant shall perform the Services as set forth in Exhibit "A" of the Agreement, and shall receive compensation therefor in an amount not to exceed Seventy-Five Thousand Dollars and No Cents ($75,000.00). This sum is separate and apart from, and in addition to, the sum of Thirty-Five Thousand Dollars and No Cents ($35,000) set forth in Amendment No. 2, which the Consultant and the City understand and agree shall be deemed to pertain to and pay for only newsletter services provided by the Consultant.

Section 3. The terms and provisions of the Agreement shall remain in full force and effect, except to the extent they are amended by this Amendment No. 3.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Amendment No. 3 as of the date first set forth hereinabove.

CITY OF INDIAN WELLS

By: _____
Greg Johnson, City Manager

One Eighty Marketing Inc
DBA Graphtek Advertising & Design

By: _____
Michael Cheley, Owner

Attest:

_____ Chief Deputy 08-11-09
City Clerk

Approved as to Form:

Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

AMENDMENT NO. 2
TO THAT CERTAIN AGREEMENT
BY AND BETWEEN CITY OF INDIAN WELLS AND
ONE EIGHTY MARKETING INC DBA GRAPHTEK ADVERTISING & DESIGN FOR
NEWSLETTER SERVICES FOR INDIAN WELLS.

This Amendment No. 2 ("Amendment No. 2") is entered into this first day of July, 2009, by and between One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design, a California corporation (the "Consultant") and the City of Indian Wells, a municipal corporation and charter city of the State of California ("City") with respect to that certain Professional Services Agreement by and between the Consultant and the City dated July 1, 2007 (the "Agreement"). The Consultant and the City agree as follows:

Section. 1. The term of the Agreement is extended for the period of July 1, 2009 through June 30, 2010 (the "Extended Term").

Section. 2. For the Extended Term, the Consultant shall perform the Services as set forth in Exhibit "A" of the Agreement, and shall receive compensation therefor in an amount not to exceed Thirty-Five Thousand Dollars and No Cents ($35,000.00).

Section 3. The terms and provisions of the Agreement shall remain in full force and effect, except to the extent they are amended by this Amendment No. 2.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Amendment No. 1 as of the date first set forth hereinabove.

CITY OF INDIAN WELLS

By: _____
Greg Johnson, City Manager

One Eighty Marketing Inc
DBA Graphtek Advertising & Design

By: _____
Michael Cheley, Owner

Attest:

_____, Chief Deputy 07-03-09
City Clerk

Approved as to Form:

Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

AMENDMENT NO. 1
TO THAT CERTAIN AGREEMENT
BY AND BETWEEN CITY OF INDIAN WELLS AND
ONE EIGHTY MARKETING INC DBA GRAPHTEK ADVERTISING & DESIGN FOR NEWSLETTER SERVICES FOR INDIAN WELLS.

This Amendment No. 1 ("Amendment No. 1") is entered into this first day of July, 2008, by and between One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design, a California corporation (the "Consultant") and the City of Indian Wells, a municipal corporation and charter city of the State of California ("City") with respect to that certain Professional Services Agreement by and between the Consultant and the City dated July 1, 2007 (the "Agreement"). The Consultant and the City agree as follows:

Section. 1. The term of the Agreement is extended for the period of July 1, 2008 through June 30, 2009 (the "Extended Term").

Section. 2. For the Extended Term, the Consultant shall perform the Services as set forth in Exhibit "A" of the Agreement, and shall receive compensation therefor in an amount not to exceed Thirty-Five Thousand Dollars and No Cents ($35,000.00).

Section 3. The terms and provisions of the Agreement shall remain in full force and effect, except to the extent they are amended by this Amendment No. 1.

IN WITNESS WHEREOF, the City and the Consultant have entered into this Amendment No. 1 as of the date first set forth hereinabove.

CITY OF INDIAN WELLS

By:_____
Greg Johnson, City Manager

One Eighty Marketing Inc
DBA Graphtek Advertising & Design

By:_____
Michael Cheley, Owner

Attest:

_____ Chief Deputy
City Clerk 09-25-08

Approved as to Form:

Stephen P. Deitsch
Stephen P. Deitsch, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Graphtek will provide graphic design and layout for 10 issues of the Indian Wells City Newsletter.

INDIAN WELLS
CALIFORNIA

CITY OF INDIAN WELLS
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this 1st day of July, 2007, by and between the **City of Indian Wells,** a municipal organization organized under the laws of the State of California with its principal place of business at 44-950 Eldorado Drive, Indian Wells, California 92210-7497 ("City") and **One Eighty Marketing Inc with a DBA of Graphtek Advertising & Design**, a corporation, with its principal place of business at 73241 Hwy 111 Ste. 2B, Palm Desert, CA 92260 ("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 and offering multimedia design and development services, corporate and brand identity design and development services, and all ancillary services and collateral materials related thereto and is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the Skins Game, meeting planner, residential, Pacific Life Open, Indian Wells Golf Resort, and B-Roll footage filming and editing projects ("Projects") 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 filming 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.

44-950 Eldorado Drive ~ Indian Wells, California 92210-7497 ~ V (760) 346-2489 F (760) 346-0407
www.IndianWells.com

3.1.2 Term. The term of this Agreement shall be from July 1, 2007 to June 30, 2008, unless earlier 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: Michael Cheley and Ron Najera.

3.2.5 City's Representative. The City hereby designates Nancy Samuelson, Director of Marketing and Community Relations 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 Michael Cheley, Owner, 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 total compensation shall not exceed **one hundred and eighty thousand dollars ($180,000.00)** without written approval of City's Director of Marketing and Community Relations. 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.

3.4 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:

One Eighty Marketing Inc DBA Graphtek Advertising & Design
73241 Hwy 111 Ste. 2B,
Palm Desert, California 92260
Attn: Michael Cheley, Owner
Phone: 760-341-4583

Fax: 760-341-9285
Email: mcheley@graphtek.com

City:

City of Indian Wells
44-950 Eldorado Drive,
Indian Wells, California 92210-7497
Attn: Nancy Samuelson
Director of Marketing and Community Relations
Phone: 760-346-2489
Fax: 760-346-0407
Email: nsamuelson@indianwells.com

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.

3.5.6 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: _____
City Manager

GRAPHTEK

By: _____
One Eighty Marketing Inc
DBA Graphtek Advertising & Design
Michael Cheley

Attest:

_____, Chief Deputy
City Clerk

Approved as to Form:

Stephen P. Deitsch
Stephen P. Deitsch
City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Graphtek provides but not limited to design, consulting, marketing and communication services. Services are as followed:

- Web Development
- Collateral Design
- Printing
- Ad campaigns
- User interface design
- Dynamic web management system
- Custom web applications
- E-marketing and communcations
- Channel 17 architecture and content development
- Content management system

EXHIBIT "B"

SCHEDULE OF SERVICES

Services will be provided on demand by the City of Indian Wells

EXHIBIT "C"

COMPENSATION

Estimates are provided to City for each project and vary based upon requirements set forth by City.