

ADDENDUM TO AGREEMENT DATED: November 5, 2009

This addendum to the agreement between the City of Indian Wells and Data Ticket, Inc. dba Revenue Experts is to renew the terms of the existing contract.

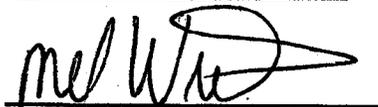
The term of this Agreement shall be from the date of this contract for a period of three additional years with automatic renewal for each subsequent one-year period. If either party wishes to terminate this Agreement, it must provide ninety days written notice to the other party prior to the annual renewal date.

The fee schedule for the processing and collection of administrative citations and other debts assigned by the Agency remains the same as attached to the original Agreement dated November 5, 2009. Exhibit A attached represents the Scope of Services. Exhibit B attached represents the performance of Hearings assigned by the Agency. Exhibit C attached represents the original fee schedule. All exhibits remain in effect.

The terms of this document shall not be disclosed by the Agency except as required by law, unless written agreement is given by Data Ticket, Inc. dba Revenue Experts, Inc.

ACCEPTED:

The City of Indian Wells



Signature

Personnel/Public Safety Director

Title

3/9/11

Date

Data Ticket, Inc. dba Revenue Experts



Signature

President

Title

3/14/11

Date

EXHIBIT "A"

SCOPE OF SERVICES

ADMINISTRATIVE CITATION PROCESSING AND COLLECTIONS

Services required for the processing, collection and appeal of Administrative Citations for you and your affiliated departments are described below. The benefits of using the administrative citation management system are:

- Toll free phone inquiries provided for citizens
- Web Site access for citation look-up provided for both citizen and Agency
- Credit cards payments accepted on-line
- System marked real-time
- Payment accepted by check, money order, or credit card
- Data entry and citation tracking is handled
- Reports are available 24/7 on the Web Site for the Agency
- Handheld ticket writers are available
- Multiple notices sent
- Delinquent fees collected
- Monthly reports provide payment reconciliation
- Monthly reports on citation status
- Appeals handled professionally and impartially
- Trained and certified hearing officers provided
- Documentation is prepared and stored in case of court appeals
- Social Security numbers are accessed for Interagency Intercept Program participation
- Interagency Intercept Program collections are offered
- System marked and documented as payments collected through FTB

The process is as follows:

- The Agency provides warning(s) to citizen regarding violation(s) and a time frame established for compliance.
- The Agency revisits site for compliance, if no compliance the citation is written.
- The citation specifies the violation(s) and informs the violator of the time frame from the date of the citation to pay the violation(s) and/or correct it/them.
- A copy of the citation is sent to The Company for collection on a daily/weekly basis within 7 days of issuance.
- Citations received from the Agency are keyed or entered electronically into The Company citation management database.

- The Violator has (per agency) days to pay or contest (appeal) the citation from the date of issue.
- If paid, payment will be entered on the Company system and deposited in Agency's bank account.
- Upon receipt of the citation for process, if no payment is made within the specified time (by Agency), the Company will mail a first notice of delinquency for payment.
- After (per Agency) days from the date of the first notice, if the citation remains unpaid, the Company will mail a second notice of delinquency for the total amount due (including any added penalties).
- After (per Agency) days from the date of the second notice, if the citation is unpaid, the Company will mail a final notice demanding payment. This notice will indicate the future actions that will be taken to collect the fine including submitting the violator's name to the Franchise Tax Board for collection through the Interagency Intercept Program, and that additional processing costs may be added to the fine.
- After 30 calendar days from the date of the final notice, if the fine is still unpaid, the Company will place the citation on the Interagency Intercept Program list for submission at the appropriate time.
- The Company will then access social security numbers to attach to citations that are eligible for the program.
- All citations attached to the same social security number will be grouped together for submission, with a total amount due showing.
- Citations will be placed in the Program during the Company's normal file transfer to the Franchise Tax Board.
- When the Company places a citation with the Interagency Intercept Program the amount of the fines plus any additional charges will be included on the total amount due by the violator and may be paid in full or in part depending on the amounts available for dispersal.

HEARING REQUESTS

- If violator wishes to contest the administrative citation, a toll free number will have been provided on the citation and upon calling the number the violator will be instructed to put their appeal in writing on a form supplied by The Company (or Agency) and post the entire amount of the bail.

- If an appeal is not directed to the Company but received by the Agency, the Agency will forward the appeal to the Company. A review will be scheduled and conducted and the decision will be sent to the citizen.
- When the appeal and bail are received within the time frame allowed, the violator will be scheduled for a hearing. This information will be transmitted to the Agency via fax and email. The violator will be notified that the appeal has been approved to go forward and will be notified of the time, date and place of the hearing.
- If the appeal is not received within the allowable time frame allowed and/or if the entire bail is not posted both the Agency and the violator will be notified that the appeal request has been denied.
- All supporting documentation will be requested by The Company from the Agency (including officer's notes and pictures) for the actual hearing.
- Following the hearing, the citizen will receive written confirmation of the decision of the Hearing Officer sent by certified mail with 10 days of the conclusion of the hearing. The Agency will be notified of the same via fax.
- If the citation is upheld, the information will include further instructions to the violator, including the time frame for a court appeal if the violator desires to continue to contest.
- If the citation is dismissed, the Agency and the violator will be notified and a refund will be generated for the posted bail.
- If there is no further appeal within the time frame allowed, the Agency will be notified of the outcome and the case closed.
- If the violator appeals to the court he is subject to pay the \$25.00 court-filing fee.
- The Company will notify the Agency and all supporting information for the case will be forwarded to the Agency for the court appearance.
- The court decision will be copied to The Company and any refund or correspondence required will be handled. If the court dismisses the citation, the Agency will be responsible for refunding the \$25.00 court-filing fee.
- The system will be updated with the appropriate information and the case closed.
- If there is no response to the notice of delinquency from the violator, the Agency will be notified for a decision on further action. Options include closing the citation unpaid, the Agency filing in small claims court against the violator or notification of the Interagency Intercept Program to attach any state tax returns or lottery winnings that would be paid to the citizen during the year.

The Hearing Officer will be an impartial official with previous experience in holding hearings and training on Municipal Code Enforcement and who has been trained according to the requirements for administrative hearings as mandated by the California legislature and has additional training from the adjudication manual. The Hearing Officer will not be compensated on a commission basis and there will be no connection between decisions and compensation for the job. Hearing Officers will be subject to review by the Agency at the Agency's expense.

The only responsibilities to be borne by the Agency are the provision of space for the in-person hearings to be held on a bi-monthly basis, the referral of the original citations and any requested supporting documentation for hearings, and the occasional appearance at a court hearing. The Company will provide forms, notices, correspondence, scheduling, documentation, database updates, tracking, reporting, banking, a toll-free number for violator questions, web site access, the Hearing Officer and all software and hardware required to handle the job efficiently and effectively. We are confident that the Agency will enjoy the benefits of this unique service.

EXHIBIT "B"

SCHEDULE OF SERVICES

The Consultant shall conduct hearings as and when assigned by the City from time to time.

EXHIBIT "C"

COMPENSATION

<u>Description – Phase I</u>	<u>Proposed Fee</u>
<u>Fee for processing and collecting each citation</u>	<u>\$ 22.00/cite</u>

Specified services and material covered by the Fee for all citations shall include:

- Data entry of handwritten citations and entry of electronically transferred citations
- Processing and collection of all payments
- Disposition and status updating
- All forms and tracking
- Correspondence tracking and response
- Up to four Notices
- 800 line voice mail information 24 hours per day, 7 days per week
- 800 line customer service answered by customer service representative
- Daily Bank Deposits
- Bank reconciliation
- Comprehensive monthly management reports on issuance and revenue
- All required insurance
- Local corporate headquarters

* (Minimum monthly fee \$ 150.00 per month) Applies if basic charges are less than that amount.

<u>Customer Communication (Interactive Voice Response System/ Call Recording) and Web Access</u>	<u>\$ 50.00/month</u>
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Includes:

- Client access to entire database real-time includes up to six user passwords
- Viewing and printing citation management reports 24/7
- Citizen web site access for viewing and paying citations 24/7

Description – Phase II

- Social Security Number Access \$ 5.00/request
- (One request for multiple citations attached to one violator)

Franchise Tax Board Interface - 15% of (Interagency Intercept Program) collected revenue

- Database transfers
- Multiple debts consolidated to one record with total due
- Files sent to IIP
- Noticing
- Daily deposits
- Payment reconciliation
- Deposit reconciliation
- Toll-free customer service inquiry lines
- Web site inquiry and payment access 24/7
- Overpayment verification and refund service
- Customer correspondence as required
- Forms
- Paperwork back-up
- Database updating
- IIP updating
- Monthly management reports

Fee to Violator for Company Credit Card Usage \$ 3.50/use

Option:
In-person Hearing and Toll-Free Hearing Appointments \$ 85.00/hr

**CITY OF INDIAN WELLS
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this 5th day of November, 2009, 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 Data Ticket, INC, DBA as Revenue Experts, INC, a California CORPORATION, with its principal place of business at 4600 Campus Drive, Suite 200, Newport Beach, CA 92660 ("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 **Administrative Citation Processing and Collection** services to public clients, 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 project **Administrative Citation Processing and Collection** ("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 **Administrative Citation Processing and Collection** 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 November 5, 2009 to November 5, 2010, 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: Mel Windsor, Personnel/Public Safety Director, and Corrie Kates, Community Development Director.

3.2.5 City's Representative. The City hereby designates the Public Safety Director and Community Development 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 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 Bill Fleming, Director of Sales and Marketing, 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 (hire and non-hired 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*: \$1,000,000 per occurrence/\$2,000,000 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 [Intentionally Omitted]

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.

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 (\$8,000) without written approval of City's Personnel/Public Safety Director. 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. 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 [Intentionally Omitted]

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 or Consultant may, by written notice, terminate the whole or any part of this Agreement at any time and without cause by giving written notice of such termination, and specifying the effective date thereof, at least seven (30) 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.

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:

Bill Fleming
Director of Sales and Marketing
4600 Campus drive, Suite 200
Newport Beach, CA 92660

City:

City of Indian Wells
44-950 Eldorado Drive, Indian Wells
California 92210-7497
Attn: Mel Windsor

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.

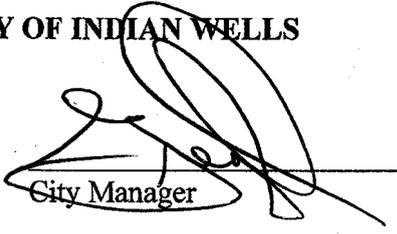
3.6 Subcontracting.

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.

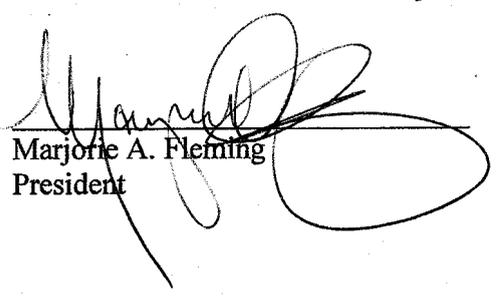
CITY OF INDIAN WELLS

[INSERT NAME OF CONSULTANT]

By:


City Manager

By:


Marjorie A. Fleming
President

Attest:


City Clerk

Chief Deputy

Approved as to Form:

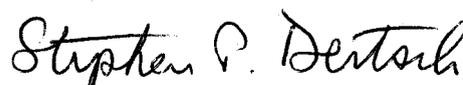

Best Best & Krieger LLP
City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

ADMINISTRATIVE CITATION PROCESSING AND COLLECTIONS

Services required for the processing, collection and appeal of Administrative Citations for you and your affiliated departments are described below. The benefits of using the administrative citation management system are:

- Toll free phone inquiries provided for citizens
- Web Site access for citation look-up provided for both citizen and Agency
- Credit cards payments accepted on-line
- System marked real-time
- Payment accepted by check, money order, or credit card
- Data entry and citation tracking is handled
- Reports are available 24/7 on the Web Site for the Agency
- Handheld ticket writers are available
- Multiple notices sent
- Delinquent fees collected
- Monthly reports provide payment reconciliation
- Monthly reports on citation status
- Appeals handled professionally and impartially
- Trained and certified hearing officers provided
- Documentation is prepared and stored in case of court appeals
- Social Security numbers are accessed for Interagency Intercept Program participation
- Interagency Intercept Program collections are offered
- System marked and documented as payments collected through FTB

The process is as follows:

- The Agency provides warning(s) to citizen regarding violation(s) and a time frame established for compliance.
- The Agency revisits site for compliance, if no compliance the citation is written.
- The citation specifies the violation(s) and informs the violator of the time frame from the date of the citation to pay the violation(s) and/or correct it/them.
- A copy of the citation is sent to The Company for collection on a daily/weekly basis within 7 days of issuance.
- Citations received from the Agency are keyed or entered electronically into The Company citation management database.

- The Violator has (per agency) days to pay or contest (appeal) the citation from the date of issue.
- If paid, payment will be entered on the Company system and deposited in Agency's bank account.
- Upon receipt of the citation for process, if no payment is made within the specified time (by Agency), the Company will mail a first notice of delinquency for payment.
- After (per Agency) days from the date of the first notice, if the citation remains unpaid, the Company will mail a second notice of delinquency for the total amount due (including any added penalties).
- After (per Agency) days from the date of the second notice, if the citation is unpaid, the Company will mail a final notice demanding payment. This notice will indicate the future actions that will be taken to collect the fine including submitting the violator's name to the Franchise Tax Board for collection through the Interagency Intercept Program, and that additional processing costs may be added to the fine.
- After 30 calendar days from the date of the final notice, if the fine is still unpaid, the Company will place the citation on the Interagency Intercept Program list for submission at the appropriate time.
- The Company will then access social security numbers to attach to citations that are eligible for the program.
- All citations attached to the same social security number will be grouped together for submission, with a total amount due showing.
- Citations will be placed in the Program during the Company's normal file transfer to the Franchise Tax Board.
- When the Company places a citation with the Interagency Intercept Program the amount of the fines plus any additional charges will be included on the total amount due by the violator and may be paid in full or in part depending on the amounts available for dispersal.

HEARING REQUESTS

- If violator wishes to contest the administrative citation, a toll free number will have been provided on the citation and upon calling the number the violator will be instructed to put their appeal in writing on a form supplied by The Company (or Agency) and post the entire amount of the bail.

- If an appeal is not directed to the Company but received by the Agency, the Agency will forward the appeal to the Company. A review will be scheduled and conducted and the decision will be sent to the citizen.
- When the appeal and bail are received within the time frame allowed, the violator will be scheduled for a hearing. This information will be transmitted to the Agency via fax and email. The violator will be notified that the appeal has been approved to go forward and will be notified of the time, date and place of the hearing.
- If the appeal is not received within the allowable time frame allowed and/or if the entire bail is not posted both the Agency and the violator will be notified that the appeal request has been denied.
- All supporting documentation will be requested by The Company from the Agency (including officer's notes and pictures) for the actual hearing.
- Following the hearing, the citizen will receive written confirmation of the decision of the Hearing Officer sent by certified mail with 10 days of the conclusion of the hearing. The Agency will be notified of the same via fax.
- If the citation is upheld, the information will include further instructions to the violator, including the time frame for a court appeal if the violator desires to continue to contest.
- If the citation is dismissed, the Agency and the violator will be notified and a refund will be generated for the posted bail.
- If there is no further appeal within the time frame allowed, the Agency will be notified of the outcome and the case closed.
- If the violator appeals to the court he is subject to pay the \$25.00 court-filing fee.
- The Company will notify the Agency and all supporting information for the case will be forwarded to the Agency for the court appearance.
- The court decision will be copied to The Company and any refund or correspondence required will be handled. If the court dismisses the citation, the Agency will be responsible for refunding the \$25.00 court-filing fee.
- The system will be updated with the appropriate information and the case closed.
- If there is no response to the notice of delinquency from the violator, the Agency will be notified for a decision on further action. Options include closing the citation unpaid, the Agency filing in small claims court against the violator or notification of the Interagency Intercept Program to attach any state tax returns or lottery winnings that would be paid to the citizen during the year.

The Hearing Officer will be an impartial official with previous experience in holding hearings and training on Municipal Code Enforcement and who has been trained according to the requirements for administrative hearings as mandated by the California legislature and has additional training from the adjudication manual. The Hearing Officer will not be compensated on a commission basis and there will be no connection between decisions and compensation for the job. Hearing Officers will be subject to review by the Agency at the Agency's expense.

The only responsibilities to be borne by the Agency are the provision of space for the in-person hearings to be held on a bi-monthly basis, the referral of the original citations and any requested supporting documentation for hearings, and the occasional appearance at a court hearing. The Company will provide forms, notices, correspondence, scheduling, documentation, database updates, tracking, reporting, banking, a toll-free number for violator questions, web site access, the Hearing Officer and all software and hardware required to handle the job efficiently and effectively. We are confident that the Agency will enjoy the benefits of this unique service.

EXHIBIT "B"

SCHEDULE OF SERVICES

The Consultant shall conduct hearings as and when assigned by the City from time to time.

EXHIBIT "C"

COMPENSATION

<u>Description – Phase I</u>	<u>Proposed Fee</u>
<u>Fee for processing and collecting each citation</u>	<u>\$ 22.00/cite</u>

Specified services and material covered by the Fee for all citations shall include:

- Data entry of handwritten citations and entry of electronically transferred citations
- Processing and collection of all payments
- Disposition and status updating
- All forms and tracking
- Correspondence tracking and response
- Up to four Notices
- 800 line voice mail information 24 hours per day, 7 days per week
- 800 line customer service answered by customer service representative
- Daily Bank Deposits
- Bank reconciliation
- Comprehensive monthly management reports on issuance and revenue
- All required insurance
- Local corporate headquarters

* (Minimum monthly fee \$ 150.00 per month) Applies if basic charges are less than that amount.

<u>Customer Communication (Interactive Voice Response System/ Call Recording) and Web Access</u>	<u>\$ 50.00/month</u>
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Includes:

- Client access to entire database real-time includes up to six user passwords
- Viewing and printing citation management reports 24/7
- Citizen web site access for viewing and paying citations 24/7

Description – Phase II

- Social Security Number Access \$ 5.00/request
- (One request for multiple citations attached to one violator)

Franchise Tax Board Interface - 15% of (Interagency Intercept Program) collected revenue

- Database transfers
- Multiple debts consolidated to one record with total due
- Files sent to IIP
- Noticing
- Daily deposits
- Payment reconciliation
- Deposit reconciliation
- Toll-free customer service inquiry lines
- Web site inquiry and payment access 24/7
- Overpayment verification and refund service
- Customer correspondence as required
- Forms
- Paperwork back-up
- Database updating
- IIP updating
- Monthly management reports

Fee to Violator for Company Credit Card Usage \$ 3.50/use

Option:
In-person Hearing and Toll-Free Hearing Appointments \$ 85.00/hr

