
City Council Meeting Agenda

Thursday, February 18, 2016

1:30 PM

City Hall Council Chamber



The Indian Wells City Council welcomes and encourages participation at City Council meetings. The Council requests speakers present their remarks in a respectful manner, within the 3 minute time limit, and focus on issues which directly affect the City or which are within the subject jurisdiction of the City. Please fill out a blue Speaker Request form and give it to the City Clerk, preferably before the start of the meeting.

Any public records, relating to an open session agenda item, that is distributed within 72 hours of the meeting is available for public inspection at City Hall reception, 44-950 Eldorado Drive, Indian Wells during normal business hours.

This City Council meeting held in memory of Loretta Ferraro

1. CONVENE THE CITY COUNCIL, PLEDGE OF ALLEGIANCE AND ROLL CALL

MAYOR DANA REED
MAYOR PRO TEM RICHARD BALOCCO
COUNCIL MEMBER DOUGLAS HANSON
COUNCIL MEMBER TED MERTENS
COUNCIL MEMBER TY PEABODY

2. APPROVAL OF THE FINAL AGENDA

3. PROCLAMATIONS AND PRESENTATIONS

- A. [1349-16](#) **Unveiling of the 2016 Commemorative Poster for the 14th Annual Indian Wells Arts Festival**
- B. [1350-16](#) **Proclamation to 2016 Senior Inspiration Recipient John Rosellini**

4. PUBLIC COMMENTS

The Council requests speakers present their remarks in a respectful manner, within the 3 minutes time limit, and focus on issues which directly affect the City or which are within the subject jurisdiction of the City. The Mayor will call upon the members of the public to address the Council. When you're called please come forward to the podium, and state your name for the record.

The Brown Act, with certain exceptions, does not permit the Council to discuss or take action on issues not listed on the agenda. The Council may respond briefly to statements made or questions posed, request clarification, or refer the item to Staff.

A. PUBLIC COMMENTS

B. RESPONSE TO PRIOR PUBLIC COMMENTS

5. CONSENT CALENDAR

All matters listed under Consent Calendar are considered to be routine and will be passed by one vote. There will be no discussion of these items unless a Council Member or a member of the public requests specific item(s) be discussed separately. Item(s) removed from the Consent Calendar will be heard immediately after approval of the remaining consent items. Public comments are limited to 3 minutes per speaker, please state your name for the record.

A. [1346-16](#) **Housing Element Annual Progress Report for 2015**

RECOMMENDED ACTIONS:

Council **RECEIVES** and **FILES** the Housing Element Annual Progress Report for 2015; and

DIRECTS Staff to submit the APR to the Governor's Office of Planning and Research and the California Department of Housing and Community Development.

Attachments: [2015 Housing Element Annual Progress Report](#)

B. [1351-16](#) **International City/County Management Association
Retirement Corporation Governmental Money
Purchase Plan and Trust Adoption Agreement**

RECOMMENDED ACTION:

Council **AUTHORIZES** and **DIRECTS** the City Manager, or his designee, to submit a restated Governmental Money Purchase Plan and Trust Adoption Agreement to International City/County Management Association Retirement Corporation.

Attachments: [ICMA Gov't Money Purchase Plan & Trust Adoption Agreement](#)

C. [1348-16](#) **City Treasurer's Report for December 2015**

RECOMMENDED ACTION:

Council **RECEIVES** and **FILES** the City Treasurer's Report for December 2015.

Attachments: [City Treasurer's Report December 2015](#)

6. GENERAL BUSINESS

The Mayor will call upon the members of the public to address the Council regarding the agenda item being considered. After the public has provided comment, the item is closed to further comment and brought to the Council for discussion and action. Public comments are limited to 3 minutes per speaker, please state your name for the record.

A. [1347-16](#) Engineering Design Contract for Cook Street Rehabilitation

RECOMMENDED ACTIONS:

Council **AWARDS** the contract to CNS Engineers, Inc. for Engineering Design Services for Cook Street Rubberized Pavement Overlay/Rehabilitation; and

AUTHORIZES and **DIRECTS** the City Manager to execute a contract for \$82,000; and

APPROVES a requisition for \$82,000 to CNS Engineers, Inc. for same.

Attachments: [Contract](#)
 [Requisition](#)

B. [1352-16](#) CVAG's Traffic Signal Synchronization Project

RECOMMENDED ACTION:

Council discusses and provides **DIRECTION** to the Coachella Valley Association of Governments (CVAG) Executive Committee representative in relation to CVAG's traffic signal synchronization project.

Attachments: [CVAG's February 8, 2016 staff report](#)

7. CITY MANAGER'S REPORTS/COMMENTS AND MATTERS FROM STAFF

The City Manager or Department Heads may make brief announcements, informal comments, or brief the Council on items of interest.

8. COUNCIL MEMBERS' REPORTS AND COMMENTS

On their own initiative, Council Members may make a brief announcement or report on their activities including their committee assignments.

A. Council Member Peabody

Coachella Valley Animal Campus
CVAG Executive Committee
Sunline Transit Agency
Indian Wells Community Activities Committee
Indian Wells Grants in Aid Committee
Indian Wells Personnel Committee

B. Council Member Mertens

Cove Communities Services Commision
CVAG Public Safety
Indian Wells Golf Resort Advisory Committee
Indian Wells Finance and Legal Services Oversight Committee
Indian Wells Public Safety Committee
Tee Committee

C. Council Member Hanson

California Joint Powers Insurance Authority
Riverside Local Agency Formation Commission
CVAG Transporation
Indian Wells Golf Resort Advisory Committee
Indian Wells Marketing Committee
Indian Wells Finance and Legal Services Oversight Committee
Tee Committee

D. Mayor Pro Tem Balocco

Coachella Valley Mountains Conservancy
Cove Communities Services Commission
CVAG Coachella Valley Conservation Commission
CVAG Energy
Greater Palm Springs Convention and Visitors Bureau
Indian Wells Public Safety Committee

E. Mayor Reed

Jacueline Cochran Regional Airport Commssion
Riverside County Transportation Commission
Southern Callifornia Association of Governments
CVAG Homelessness
Indian Wells Marketing Committee
Indian Wells Personnel Committee

9. CITY ATTORNEY REPORTS AND COMMENTS

10. CLOSED SESSION

- A. [1355-16](#) **Conference with Labor Negotiators Pursuant to Government Code 54957.6. City Designated Representative: City Attorney. Unrepresented Employee: City Manager.**

11. ADJOURNMENT

To a regularly scheduled meeting of the City Council to be held at 1:30 p.m. on March 3, 2016 in the City Hall Council Chambers.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Chief Deputy City Clerk at (760) 346-2489. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. 128 CFR 35.102.35.104 ADA Title III

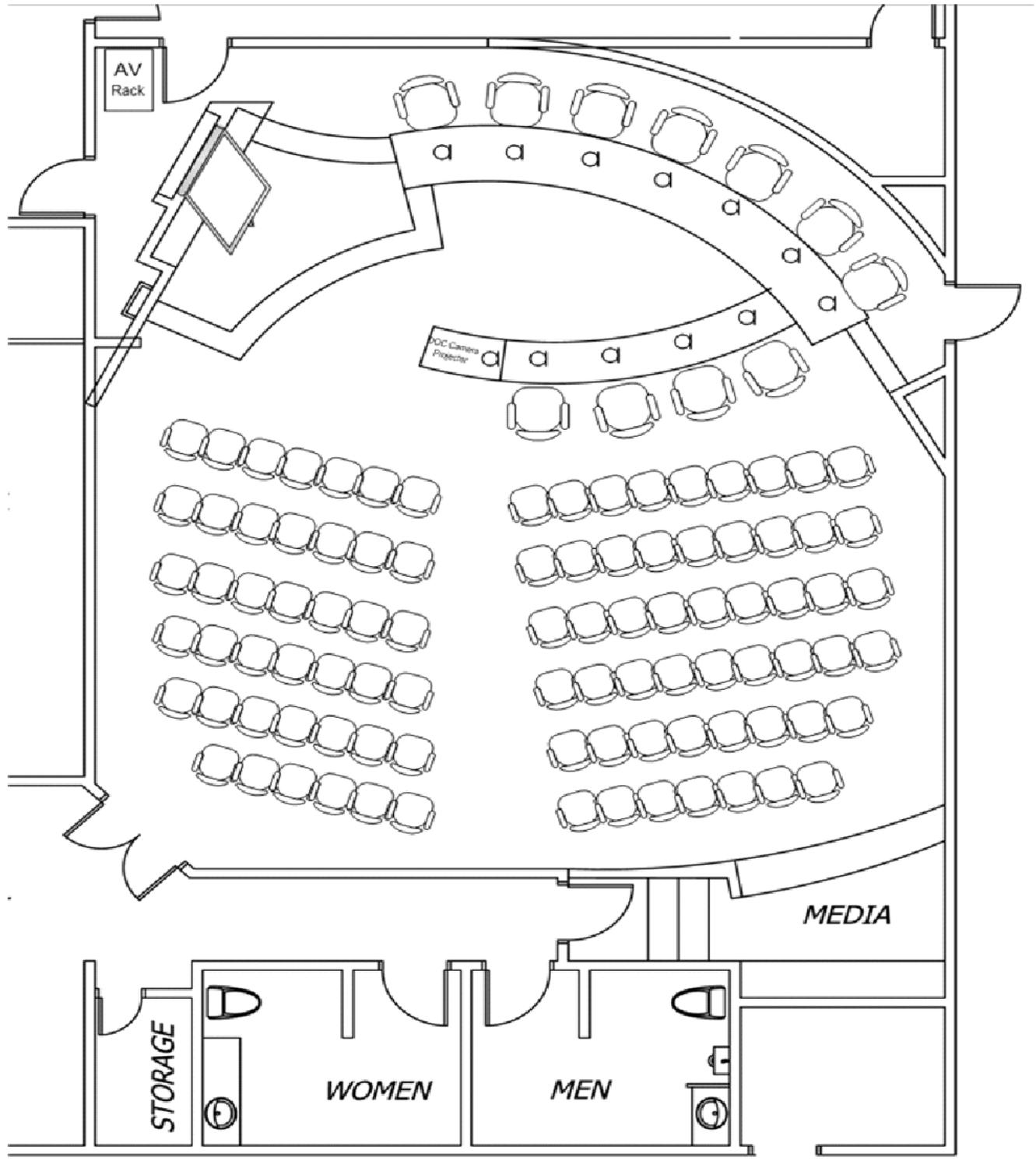
Affidavit of Posting

I, Anna Grandys, certify that on February 9, 2016, I caused to be posted a notice of a City Council Meeting to be held on February 18, 2016 at 1:30 p.m. in the City Hall Council Chambers.

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



Anna Grandys
City Clerk





City of Indian Wells

44-950 Eldorado Drive,
Indian Wells

2/18/2016

File #: 1349-16 Item #: A.

Unveiling of the 2016 Commemorative Poster for the 14th Annual Indian Wells Arts Festival



City of Indian Wells

44-950 Eldorado Drive,
Indian Wells

2/18/2016

File #: 1350-16 **Item #:** B.

Proclamation to 2016 Senior Inspiration Recipient John Rosellini



2/18/2016

File #: 1346-16 Item #: A.

Indian Wells City Council ***Staff Report - Community Development***

Housing Element Annual Progress Report for 2015

RECOMMENDED ACTIONS:

Council **RECEIVES** and **FILES** the Housing Element Annual Progress Report for 2015; and

DIRECTS Staff to submit the APR to the Governor's Office of Planning and Research and the California Department of Housing and Community Development.

DISCUSSION:

Background:

Each city and county planning agency is required to prepare a Housing Element Annual Progress Report ("APR") to report on the status of the Housing Element and on the progress of the implementation of the policies in the Element, using the forms and definitions adopted by the California Department of Housing and Community Development ("HCD").

The Housing Element is used to identify projected housing needs of the community, and establish policies to support the further development of all housing types, including affordable housing within the City. All California municipalities are required to adopt a Housing Element as part of their General Plan. Distinct from other General Plan elements, the Housing Element is subject to detailed statutory requirements and mandatory review by HCD.

This APR report is for calendar 2015, and addresses the City's progress in meeting the 2013 Regional Housing Needs Assessment ("RHNA") projected housing need identified in the 2014-21 Housing Element. It also describes the actions taken towards completion of the programs, and status of compliance with the deadlines outlined in the Housing Element.

The APR contains five tables, four that address the City's progress in meeting the RHNA housing need, and one that addresses the actions taken towards completion of the programs, and the status of compliance with the deadlines of the Housing Element.

Discussion:

RHNA Progress

The 2013 RHNA allocated to cities and counties within the Southern California Association of Governments region their "fair share" of the regions' projected housing need by household income group for the planning period of January 1, 2014 to October 15, 2021. Indian Wells' RHNA allocation for the period is 160 housing units.

The following table identified in the City's Housing Element represents the RHNA allocation broken down by unit income level:

<i>Income Level</i>	<i>Unit No.</i>	<i>Distribution</i>
Very Low	40	25.0%
Low	27	16.9%
Moderate	31	19.4%
Above Moderate	62	38.8%
Total	160	100.0%

Tables A, A2, A3, and B of the ARP report on construction activities that support the goals of the 2013 RHNA, specifically:

- Table A provides a summary of new construction for Very Low, Low, and Mixed Income Multifamily Projects. This table identifies that no Extremely Low Income, Very Low Income, Low Income, or Moderate-Income units were constructed during the reporting period.
- Table A2 provides a summary of Units Rehabilitated, Preserved, or Acquired, pursuant to Government Code requirements. This table identifies that no units were rehabilitated, preserved, or acquired during the reporting period.
- Table A3 provides a summary for Moderate and Above Moderate-Income Units. This table identifies 43 (42 single-family homes and 1 second unit) Above Moderate-Income units were constructed during the January 1, 2015 to December 31, 2015 reporting period.
- Table B provides a summary of the Regional Housing Needs Allocation Progress. This table provides a summary of permitted units issued by affordability category and identifies a total of 83 Above Moderate-Income units constructed. No other types of units have been constructed so far during the 2014-2021 Housing Element cycle.

Housing Programs Progress

File #: 1346-16 **Item #:** A.

Table C of the APR reports the City's annual progress in the implementation of programs and statutory requirements of the 2014-2021 Housing Element. Staff continues to monitor the programs as outlined by the timeframes.

ATTACHMENT:

1. 2015 Housing Element Annual Progress Report

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction INDIAN WELLS

Reporting Period 01/01/2015 - 12/31/2015

Pursuant to GC 65400 local governments must provide by April 1 of each year the annual report for the previous calendar year to the legislative body, the Office of Planning and Research (OPR), and the Department of Housing and Community Development (HCD). By checking the “Final” button and clicking the “Submit” button, you have submitted the housing portion of your annual report to HCD only. Once finalized, the report will no longer be available for editing.

The report must be printed and submitted along with your general plan report directly to OPR at the address listed below:

Governor’s Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction INDIAN WELLS
 Reporting Period 01/01/2015 - 12/31/2015

Table A

Annual Building Activity Report Summary - New Construction
Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information							Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions		
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low- Income	Low- Income	Moderate- Income	Above Moderate- Income			See Instructions	See Instructions	
(9) Total of Moderate and Above Moderate from Table A3				0	43						
(10) Total by Income Table A/A3			0	0	0	43					
(11) Total Extremely Low-Income Units*			0								

* Note: These fields are voluntary

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction INDIAN WELLS

Reporting Period 01/01/2015 - 12/31/2015

Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity	0	0	0	0	
(2) Preservation of Units At-Risk	0	0	0	0	
(3) Acquisition of Units	0	0	0	0	
(5) Total Units by Income	0	0	0	0	

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction INDIAN WELLS
 Reporting Period 01/01/2015 - 12/31/2015

Table A3
Annual building Activity Report Summary for Above Moderate-Income Units
(not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate	0	0	0	0	0	0	0
No. of Units Permitted for Above Moderate	42	0	0	1	0	43	0

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction INDIAN WELLS

Reporting Period 01/01/2015 - 12/31/2015

Table B
Regional Housing Needs Allocation Progress
Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.												Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level		RHNA Allocation by Income Level	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9		
Very Low	Deed Restricted	40	0	0	0	0	0	0	0	0	0	0	40
	Non-Restricted		0	0	0	0	0	0	0	0	0		
Low	Deed Restricted	27	0	0	0	0	0	0	0	0	0	0	27
	Non-Restricted		0	0	0	0	0	0	0	0	0		
Moderate		31	0	0	0	0	0	0	0	0	0	0	31
Above Moderate		62	0	40	43	0	0	0	0	0	-	83	0
Total RHNA by COG. Enter allocation number:		160											
Total Units ▶ ▶ ▶			0	40	43	0	0	0	0	0	0	83	
Remaining Need for RHNA Period ▶ ▶ ▶ ▶ ▶													98

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
 (CCR Title 25 §6202)

Jurisdiction INDIAN WELLS

Reporting Period 01/01/2015 - 12/31/2015

Table C

Program Implementation Status

Program Description (By Housing Element Program Names)	Housing Programs Progress Report - Government Code Section 65583. Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	Objective	Timeframe in H.E.	Status of Program Implementation
IIB1.A Rehabilitation and Preservation	Refer property owners to applicable agencies/organizations for rehabilitation assistance.	Ongoing	The City will refer property owners for rehabilitation assistance including rebates, grants and loans, through outside programs provided by utility providers and other organizations.
IIB2.A Production of New Housing Units	20 extremely low income units; 20 very low income units, 27 low income units; 31 moderate income units; 62 above moderate income units.	Evaluate and establish incentives within 1 year	The City continues to provide incentives and flexibility in development standards to encourage affordable housing development as outlined in Section 21.12.040 of the City's Municipal Code. The City is looking at ways to streamline the development process and continues to promote development of vacant properties.
IIB2.B Vacant and Underutilized Land Survey	Update the survey.	Annually	The City maintains a comprehensive land use survey identifying vacant and underutilized parcels suitable for residential development.
IIB2.C Evaluate Alternative Funding and Financing Mechanisms	Evaluate Alternative Funding and Financing Mechanisms within 6 Months of the Housing Element Adoption; Develop Strategy within 1 Year of the Housing Element Adoption; Review and Update Strategy Bi-Annually.	Ongoing	The City continues to collaborate with private, non-profit, state and federal entities to investigate alternative methods for funding and financing the construction of new housing units.

IIB3.A Monitoring Potential Constraints	Review and revise the zoning and development standards if needed.	Ongoing	The City continually monitors regulations, procedures and fees to identify any potential constraints to the development and maintenance of housing.
IIB3.B Monitoring Reasonable Accommodation Procedures	Review and revise the reasonable accommodation procedures if needed.	Annually	The City continues to maintain a written policy in the Building Department Manual for reviewing and approving requests for reasonable accommodations. The City has not identified any revisions necessary to maintain consistency with fair housing requirements.
IIB3.C Development Guidelines and Procedures	Provide information online and at the public counter.	Ongoing	The City maintains existing development guidelines online at the counter, which specify the procedures, materials, time frames, and costs associated with various zoning and subdivision applications.
IIB4.A Fair Housing Policy Procedures	Provide information on fair housing services and policy at public counters and at City website and refer complaints to appropriate organizations.	Ongoing	The City continues to provide information about fair housing to inquiring parties through City Hall.
IIB4.B Section 8 Housing Choice Vouchers	Provide information on Section 8 Housing Choice Vouchers at City Hall and on the City's website and refer inquiries to the County of Riverside.	Ongoing	The City continues to provide referral services on behalf of the County for Section 8 information.
IIB4.C Coordination on Homeless Issues	Address homeless issues.	Ongoing	The City will continue to coordinate with the County of Riverside, adjacent jurisdictions and applicable service providers to address homeless issues in the Coachella Valley.
IIB4.D Support for Persons with Developmental Disabilities	Adequate housing for persons with developmental disabilities.	Ongoing	The City supports the elimination of barriers to housing for persons with developmental disabilities.
IIB5.A Green Building Program	Promote energy conservation and green building.	Ongoing	The City continues to support the development of green building practices in housing and sustainability programs by participating in the CVAG Green for Life Program.

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction INDIAN WELLS
Reporting Period 01/01/2015 - 12/31/2015

General Comments:



2/18/2016

File #: 1351-16 Item #: B.

Indian Wells City Council ***Staff Report - Human Resources***

International City/County Management Association Retirement Corporation Governmental Money Purchase Plan and Trust Adoption Agreement

RECOMMENDED ACTION:

Council **AUTHORIZES** and **DIRECTS** the City Manager, or his designee, to submit a restated Governmental Money Purchase Plan and Trust Adoption Agreement to International City/County Management Association Retirement Corporation.

DISCUSSION:

Since 1993, Indian Wells has provided an employer paid defined contribution retirement plan to employees. Organized under Internal Revenue Code ("IRC") Section 401(a), the plan is an employer sponsored money purchase plan and trust managed by the International City/County Management Association Retirement Corporation ("ICMA-RC"). The City pays 2.5% of base pay for all permanent full-time employees as a defined contribution retirement benefit.

Every six years, the Internal Revenue Service ("IRS") reviews 401(a) plan documents for compliance with the IRC. Based on a recent review, the IRS has asked ICMA-RC to obtain updated agreements from all clients restating their plan's options. The City last updated the plan agreement in July of 2004.

ICMA-RC provided the City with a standardized restatement agreement (**Attachment 1**). All options remain the same with the plan and are detailed in the restated agreement.

FISCAL IMPACT:

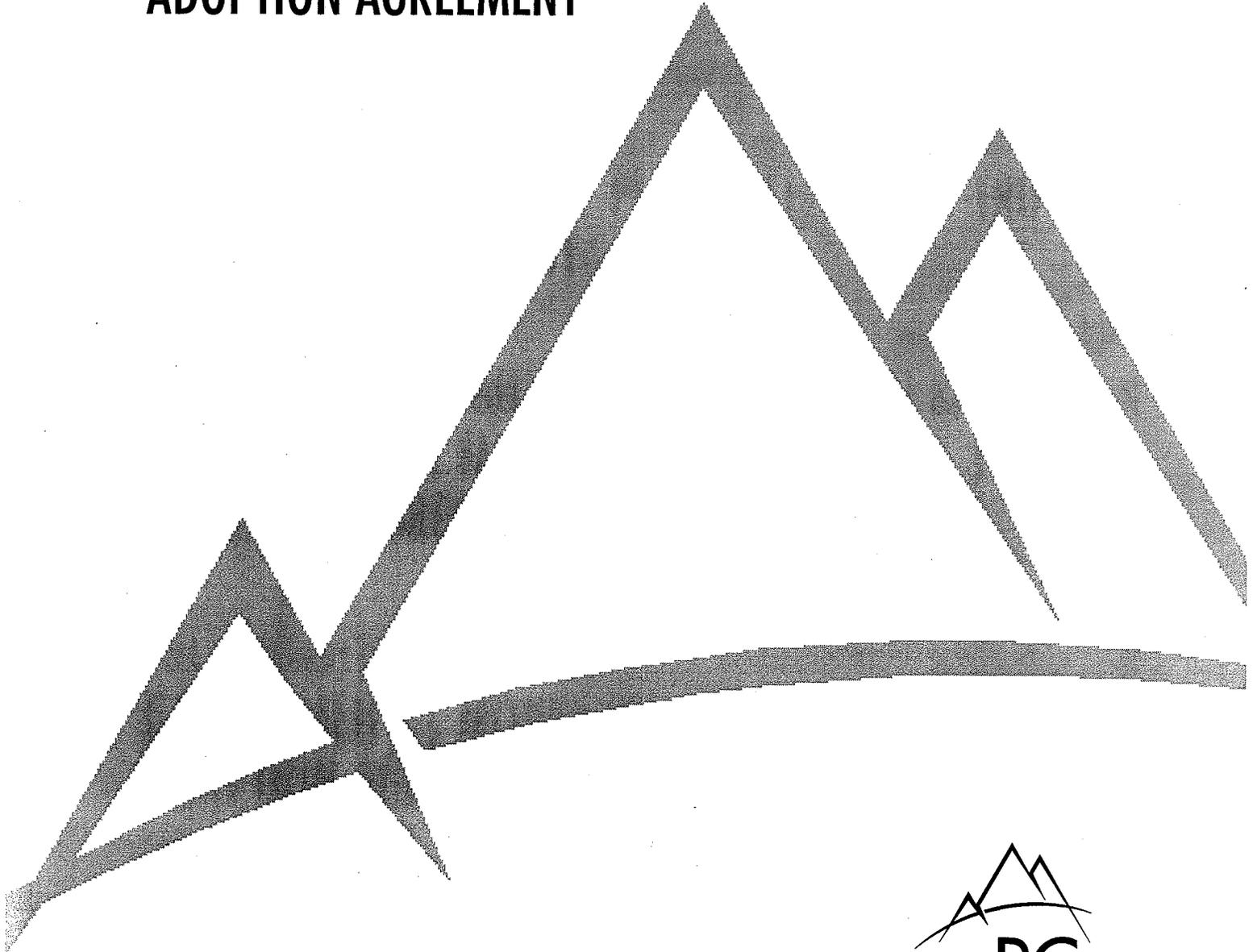
There is no additional fiscal impact.

ATTACHMENT:

1. ICMA Governmental Money Purchase Plan & Trust Adoption Agreement

ICMA RETIREMENT CORPORATION

GOVERNMENTAL MONEY PURCHASE PLAN & TRUST ADOPTION AGREEMENT



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST
ADOPTION AGREEMENT**

Plan Number 109022

The Employer hereby establishes a Money Purchase Plan and Trust to be known as CITY OF INDIAN WELLS
(the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

Yes No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

CITY OF INDIAN WELLS

I. **Employer:** CITY OF INDIAN WELLS

II. Effective Dates

1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: _____

(Note: An alternate effective date can be no earlier than January 1, 2007.)

2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

(Note provision and effective date.)

III. Plan Year will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(f) of the Plan.)

The twelve (12) consecutive month period commencing on _____ and each anniversary thereof.

IV. Normal Retirement Age shall be age 55.0 (not to exceed age 65).

Important Note to Employers: Normal Retirement Age is significant for determining the earliest date at which the Plan may allow for in-service distributions. Normal Retirement Age also defines the latest date at which a Participant must have a fully vested right to his/her Account. There are IRS rules that limit the age that may be specified as the Plan's Normal Retirement Age. The Normal Retirement Age cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. An age under 55 is presumed not to satisfy this requirement, unless the Commissioner of Internal Revenue determines that the facts and circumstances show otherwise.

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good

Whether an age between 55 and 62 satisfies this requirement depends on the facts and circumstances, but an Employer's good faith, reasonable determination will generally be given deference. A special rule, however, applies in the case of a plan where substantially all of the participants in the plan are qualified public safety employees within the meaning of section 72(t)(10)(B) of the Code, in which case an age of 50 or later is deemed not to be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

V. ELIGIBILITY REQUIREMENTS

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) _____

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. **Note:** As stated in Sections 4.07 and 4.08, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment) N/A.

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. **The Employer shall contribute as follows:** (Choose all that apply, but at least one of Options A or B. If Option A is not selected, Employer must pick up Participant Contributions under Option B.)

Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chosen, please complete section C.)

A. Employer Contributions. The Employer shall contribute on behalf of each Participant 2.5 % of Earnings or \$ _____ for the Plan Year (subject to the limitations of Article V of the Plan).

Mandatory Participant Contributions
 are required are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

Yes No

Employee Opt-In Mandatory Contributions. Each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

Yes No

Contribution Schedule.

- (i) _____% of Earnings,
(ii) \$ _____, or
(iii) a whole percentage of Earnings between the range of _____ (insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions¹ (pick up is required if Option A is not selected).

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

- C. Election Window (Complete if Option B is selected):
Newly eligible Employees shall be provided an election window of _____ days (no more than 60 calendar days) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

2. The Employer may also elect to contribute as follows:

- A. Fixed Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant _____% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed _____% of Earnings or \$ _____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.
- B. Variable Employer Match of Voluntary After-Tax Participant Contributions. The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):
_____ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____% of Earnings or \$ _____);

¹ Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings; however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

PLUS _____% of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate _____% of Earnings or \$ _____).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____% of Earnings, whichever is _____ more or _____ less.

3. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

4. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

5. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

BI-WEEKLY

6. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

- A. Plan contributions will be made based on differential wage payments:

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here:

- B. Participants who die or become disabled will receive Plan contributions with respect to such service:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007, unless another later effective date is filled in here:

VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- 1. Overtime
 Yes No
- 2. Bonuses
 Yes No
- 3. Other Pay (specifically describe any other types of pay to be included below)

VIII. ROLLOVER PROVISIONS

- 1. The Employer will permit rollover contributions in accordance with Section 4.12 of the Plan:
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
- 2. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.
 Effective Date is _____
(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

IX. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.02 of the Plan).

- 1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (e) of the Plan will apply unless another method has been indicated below.
 Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)
- 2. The Limitation Year is the following 12 consecutive month period: _____
- 3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007. _____

(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

X. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. (For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)

Period of Service Completed	Percent Vested
Zero	100 %
One	100 %
Two	100 %
Three	100 %
Four	100 %
Five	100 %
Six	100 %
Seven	100 %
Eight	100 %
Nine	100 %
Ten	100 %

XI. WITHDRAWALS AND LOANS

1. In-service distributions are permitted under the Plan after a participant attains (select one of the below options):

- Normal Retirement Age
- Age 70½ (*"70½" is the default provision under the Plan if no selection is made.*)
- Alternate age (after Normal Retirement Age): _____
- Not permitted at any age

2. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days.

- Yes
- No (*"Yes" is the default provision under the plan if no selection is made.*)

3. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

- Yes
- No (*"No" is the default provision under the Plan if no selection is made.*)

4. In-service distributions of the Rollover Account are permitted under the Plan, as provided in Section 9.07.

- Yes
- No (*"No" is the default provision under the Plan if no selection is made.*)

5. Loans are permitted under the Plan, as provided in Article XIII of the Plan:

- Yes
- No (*"No" is the default provision under the Plan if no selection is made.*)

XII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

- 1. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
- 2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (*"Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.*)
- 3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

XIII. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

- All Eligible Employees
- Other: _____

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave*):

- 1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____ 2.5 % of Final Pay to the Plan (subject to the limitations of Article V of the Plan).
- 2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute _____ % (insert fixed percentage of final pay to be contributed) or up to _____ % (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XIV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: _____

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (insert definition of accrued leave that is bona fide vacation and/or sick leave):

1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):

- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of _____ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).
- For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____% of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____% (insert fixed percentage of accrued unpaid leave to be contributed) or up to _____% (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan). Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVI. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Money Purchase Plan and Trust. This ICMA Retirement Corporation Governmental Money Purchase Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XVIII. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XIX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 20_____.

EMPLOYER

ICMA RETIREMENT CORPORATION
777 North Capitol St., NE Suite 600
Washington, DC 20002
800-326-7272

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-214-21268-201405-W1303

ICMA RETIREMENT CORPORATION

GOVERNMENTAL MONEY PURCHASE PLAN & TRUST



ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST

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ICMA RETIREMENT CORPORATION GOVERNMENTAL MONEY PURCHASE PLAN & TRUST

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.13 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II. DEFINITIONS

- 2.01 Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.
- 2.02 Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.
- 2.04 Beneficiary.** The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement. Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII. Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.

- 2.05 Break in Service.** A Period of Severance of at least twelve (12) consecutive months. In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.
- 2.06 Code.** The Internal Revenue Code of 1986, as amended from time to time.
- 2.07 Covered Employment Classification.** The group or groups of Employees eligible to make and/or have contributions to this Plan, made on their behalf, as specified by the Employer in the Adoption Agreement.

2.08 Disability. A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.

2.09 Earnings.

(a) **General Rule.** Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.

(b) **Limitation on Earnings.** For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

(c) **Limitations for Governmental Plans.** In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

(d) **Earnings Paid After Severance from Employment.** Earnings for purposes of allocations under the Plan shall not include amounts paid after a Participant's severance from Employment with the Employer except as provided in this Section 2.09(d).

(1) **Leave Cashouts.** Earnings shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (i) the Participant would have been able to use the leave if employment had continued, and (ii) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

(2) **Regular Pay.** Earnings shall include regular pay after severance from employment if:

- (a) The payment is included in the Participant's W-2 earnings;
- (b) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (c) Such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

Notwithstanding anything to the contrary in this subsection (b), unless the Employer has specifically elected to include overtime compensation and bonuses in Earnings, Earnings shall exclude overtime compensation and bonuses paid after severance from employment.

(3) **Effective Date.** This Section 2.09(d) is effective for Plan Years beginning on or after January 1, 2009. For Plan Years beginning before January 1, 2009, the amounts specified in subsections (a) and (b) must be paid within 2½ months after severance from employment with the Employer maintaining the Plan.

- 2.10 Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.
- 2.11 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.
- 2.12 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.
- 2.13 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.
- 2.14 Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Rollover, and Voluntary Contribution Accounts.
- 2.15 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.
- 2.16 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).

2.17 Period of Service. For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

2.18 Period of Severance. A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

2.19 Plan. This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.

2.20 Plan Administrator. The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator. Unless otherwise provided in the Plan, the Plan Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction.

2.21 Plan Year. The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

2.22 Trust. The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

3.01 Service. Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

3.02 Age. The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.

3.03 Return to Covered Employment Classification. In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

- 3.04 Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

- 4.01 Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.

- 4.02 Forfeitures.** All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be used no later than the end of the next Plan Year. Forfeitures will be used to reduce dollar for dollar Employer Contributions otherwise required under the Plan. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.

- 4.03 Mandatory Participant Contributions.** If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify in a contemporaneous written document by a person duly authorized by the Employer that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

- 4.04 Employer Matching Contributions of Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.

- 4.05 Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty-five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

- 4.06 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant. No part of the deductible voluntary contribution account will be used to purchase life insurance.
- 4.07 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.08 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. This election may be made even if the Employer does not elect to make contributions under Section 4.01.
- 4.09 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.

4.10 Accrual of Additional Benefits for Qualified Military Service.

- (a) **Death Benefits with Respect to Qualified Military Service.** In the case of a Participant who dies on or after January 1, 2007, while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in the Participant's entire Employer Contribution Account to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
- (b) **Benefit Accruals with Respect to Differential Wage Payments.** If the Employer so elects in the Adoption Agreement, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)). Solely for purposes of applying the limits of Code section 415, differential wage payments shall be treated as compensation.
- (c) **Benefit Accruals with Respect to Qualified Military Service.** Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects in the Adoption Agreement, Participants who die or become Disabled while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).

- 4.11 Changes in Participant Election.** A Participant may elect to change his/her rate of Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

4.12 Portability of Benefits.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:
- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;
 - (2) An annuity contract described in Section 403(b) of the Code;
 - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
 - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
- (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
- (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
- (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.
- (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

4.13 Return of Employer Contributions. Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ALLOCATIONS

5.01 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

5.02 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
 - (1) The total Excess Amount allocated as of such date, multiplied by
 - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.

5.03 Definitions. For the purposes of this Article, the following definitions shall apply:

- (a) Annual Additions. The sum of the following amounts credited to a Participant's account for the Limitation Year:
 - (1) Employer Contributions (including contributions "picked up" by the Employer under Section 4.03);
 - (2) Forfeitures;
 - (3) Employee contributions (including after-tax Voluntary Contributions under Section 4.05 and Mandatory Participant Contributions under Section 4.03 not "picked up" by the Employer); and
 - (4) Allocations under a simplified employee pension. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.
 - (5) Notwithstanding the above, the term Annual Additions does not include the following:
 - (a) Restorative Payments. Annual Additions for purposes of Code section 415 shall not include restorative payments. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that give rise to Annual Additions.

(b) **Other Amounts.** Annual Additions for purposes of Code section 415 shall not include (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; (iv) repayments of amounts described in Code section 411(a)(7)(B) (in accordance with Code sections 411(a)(7)(C)) and 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code section 414(d)) as described in Code section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments; (v) Employee Contributions to a qualified cost of living arrangement within the meaning of Code section 415(k)(2)(B); (vi) catch-up contributions made in accordance with section 414(v) and §1.414(v)-1 and (vii) excess deferrals that are distributed in accordance with §1.402(g)-1(e)(2) or (3).

(c) **Date of Employer Contributions.** Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.

(b) **Compensation.** Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. section 1.62-2(c).

(1) Notwithstanding the foregoing, Compensation does not include:

(i) Contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as Compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Participant when distributed; and

(ii) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code section 125).

(iii) Other items of remuneration that are similar to the items listed in subparagraph (i) or (ii) of this subsection (b).

(2) **Compensation Paid After Severance or Deemed Severance from Employment.** Compensation shall be adjusted as set forth herein for the following types of compensation paid after a Participant's severance from employment (as determined under section 415 of the Code and the regulations thereunder) with the Employer. Any payment that is not described in subsection (i), (ii), (iii), or (iv) of this Section is not considered Compensation within the meaning of section 415 of the Code if paid after severance from employment with the Employer.

(i) Regular Pay.

- (A) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
- (B) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (C) Such amounts are paid:
1. for Limitation Years beginning before January 1, 2009, within 2½ months after severance from employment with the Employer maintaining the Plan; and
 2. for Limitation Years beginning on or after January 1, 2009, by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.
- (D) The date January 1, 2009 in subsections (b)(2)(i)(C)(1) and (2) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(ii) Leave Cashouts.

- (A) For Limitation Years beginning before January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid within 2½ months after severance from employment with the Employer maintaining the Plan, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.
- (B) For Limitation Years beginning on or after January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.
- (C) The date January 1, 2009 in subsections (b)(2)(ii)(A) and (B) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(iii) Salary Continuation Payments for Military Service Participants.

- (A) Compensation includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u) (1)) to the extent:
1. Those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; and

2. Those payments would be included in Compensation if the individual had continued to perform services for the Employer rather than entering qualified military service.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)).

(iv) Salary Continuation Payments for Disabled Participants.

(A) Compensation includes amounts paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) to the extent:

1. Salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period or the Participant was not a highly compensated employee (as defined in Code section 414(q)) immediately before becoming disabled.
2. Those amounts would be included in Compensation if the Participant had continued to perform services for the Employer.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year. Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

(c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost of-living in accordance with section 415(d) of the Code.

(d) Employer: The Employer that adopts this Plan.

(e) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

(f) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in section IX. 2 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. The Limitation Year may only be changed by Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year and the maximum permissible amount shall be prorated for the resulting short Limitation Year.

(g) **Maximum Permissible Amount:** The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) One hundred percent (100%) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

Number of months in the short Limitation Year

12

5.04 **Aggregation and Disaggregation of Plans.**

(a) **Generally.** For purposes of applying the limitations of Code section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives Annual Additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and any other entity which the Employer determines, based on a reasonable, good faith interpretation of existing law in accordance with Notice 89-23, 1989-1 C.B. 654, as modified by Notice 96-64, 1996-2 C.B. 229, should be aggregated for purposes of applying the limitations of Code section 415. For purposes of this Section:

- (1) A former employer is a "predecessor employer" with respect to a Participant if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. section 1.415(f)-1(b)(2) apply as if the Employer and predecessor employer constituted a single employer under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.
- (2) With respect to an Employer, a former entity that antedates the Employer is a "predecessor employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code section 415(f) and the Treasury Regulations thereunder as of the first day of a Limitation Year do not fail to satisfy the requirements of Code section 415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no Annual Additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

5.05 Effective Date. Except as otherwise provided in Section 5.03(b)(2), this Article shall apply to limitation years beginning on or after July 1, 2007. The Employer may elect a delayed effective date for this Article in Section IX. 3 of the Adoption Agreement, however, such effective date must apply to limitation years that begin on or after the date that is 90 days after the close of the first legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.

VI. TRUST AND INVESTMENT OF ACCOUNTS

- 6.01 Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.
- 6.02 Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Sections 6.05 and 13.03.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
 - (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
 - (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
 - (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any

claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person, or the Employer if directing such person, decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

6.08 Deemed IRAs. If deemed IRAs are available pursuant to section 408(q) of the Code, the assets of such deemed IRAs may be commingled with the Plan assets for investment purposes but, if held in the same trust, the trustee shall maintain a separate account for each deemed IRA.

VII. VESTING

7.01 Vesting Schedule. The portion of a Participant's Account attributable to Mandatory Participant Contributions and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.04, 18.02(a) and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

7.02 Crediting Periods of Service. Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an Hour of Service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

7.03 Service After Break in Service. In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

7.04 Vesting Upon Normal Retirement Age. Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

7.05 Vesting Upon Death or Disability. Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

- 7.06 Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions. Forfeitures shall be allocated in the manner described in Section 4.02.
- 7.07 Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

- 8.01 Claim of Benefits.** A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.
- 8.02 Appeal Procedure.** If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

- 9.01 Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or incurs a severance from employment for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the one-hundred eighty (180) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

- 9.02 Restrictions on Immediate Distributions.** Notwithstanding anything to the contrary contained in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the one-hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available

under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.05(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the Plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.10.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:
 - (1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
 - (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;

- (ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and
- (iii) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or, for distributions occurring after December 31, 2007, to a Roth IRA described in § 408A of the Code, or to a qualified defined contribution plan described in section 401(a) or a qualified annuity contract described in section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) Eligible Retirement Plan.

- (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an “IRA”);
- (ii) an annuity plan described in section 403(a) of the Code;
- (iii) an annuity contract described in section 403(b) of the Code;
- (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan;
- (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee’s Eligible Rollover Distribution; or
- (vi) for distributions occurring after December 31, 2007, a Roth IRA described in Code section 408A. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

(3) Distributee. Participant; in addition, the Participant’s surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless a later date is elected by the Employer pursuant to subsection (d)(1) below, but no later than Plan Years beginning after December 31, 2009), a distributee includes the Employee’s or former Employee’s nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary for the purpose of receiving the distribution.

(4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(d) Rollover by a Non-Spouse Designated Beneficiary.

- (1) Unless otherwise elected by the Employer in the Adoption Agreement, for distributions beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan

that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(2) Notwithstanding paragraph (1), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

(c) Rollover by a Surviving Spouse Distributee. If any distribution attributable to a Participant is paid to the Participant’s surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the Participant. However, a qualified plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A-2) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant’s benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant’s Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11) (A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant’s Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.07 In-Service Distribution from Rollover Account. Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

9.08 In-Service Distributions.

(a) Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts.

- (b) If elected by the Employer, in-service distributions may be made beginning after June 1, 2009 to a Participant who has attained Normal Retirement Age or an alternate age (after Normal Retirement Age) elected by the Employer, and who has not yet incurred a severance from employment.
- (c) A Participant's benefit under the Plan may not be distributed before the Participant attains age 62 or, if earlier, the Participant separates from employment (or has a deemed separation), attains Normal Retirement Age under the plan, dies, or becomes disabled, or upon termination of the Plan.
- (d) Distributions under Section 9.08 may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

9.09 Latest Commencement of Benefits. Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.

9.10 Spousal Consent. Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse's notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

9.11 Deemed Severance from Employment.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.
- (b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to make an after-tax voluntary contribution during the six-month period beginning on the date of the distribution.
- (c) If a Participant receives a distribution which could be attributable to:
 - (i) a deemed severance from employment described in subsection (a); or
 - (ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on after-tax voluntary contributions set forth in subsection (b).

9.12 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term "Eligible Retired Public Safety Officer" means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term "Public Safety Officer" has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.

- (c) The term “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

- (a) Generally. Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant’s interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002. With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.
- (b) Distributions in Accordance with 401(a)(9). All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
- (1) The life of the Participant,
 - (2) The joint lives of the Participant and a designated Beneficiary,
 - (3) A period certain not extending beyond the life expectancy of the Participant, or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.
- (e) EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in section 702 of the Emergency Economic Stabilization Act of 2008 (“EESA”) shall apply to the Plan.
- (f) KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 (“KETRA”) and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
- (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or

- (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

(a) Death On or After Date Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
- (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Required Distributions Begin.

- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).

- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

- (a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

10.06 Application of Minimum Distribution Requirements. The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

10.07 Special Rule for Scheduled Installment Payments. All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 10.07, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

XI. MODES OF DISTRIBUTION OF BENEFITS

11.01 Normal Mode of Distribution. Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment.

Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

11.02 Elective Mode of Distribution. Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (c) Other. Any other sequence of payments requested by the Participant.
- (d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant's election of a payment option must be made in writing between thirty (30) and one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/ her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

- (a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.
- (b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the one-hundred eighty (180) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (b) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS

13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants who are active Employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
 - (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or

- (2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer, including 457(b) plans, under Code section 72(p)(4) are aggregated.

- (h) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) Length of Loan. The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due.
- (j) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer. Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.
- (l) Security. The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) Assignment or Pledge. For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) Spousal Consent. If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan. Spousal consent shall be obtained no earlier than the beginning of the one-hundred eighty (180) day period (ninety (90) day period for plan years beginning before January 1, 2007) that ends on the date on which the loan is to be so secured. The consent

must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.

- (o) **Other Terms and Conditions.** The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:
 - (1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;
 - (2) rules relating to reamortization of loans; and
 - (3) rules relating to refinance of loans.

13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account. A payment intended to be a Prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(d)(2) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. An Employer that amends the Plan for any other reason will be considered to have an individually designed plan.

14.02 Amendment of Vesting Schedule. If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

- 14.04 Discontinuance of Contributions.** A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.
- 14.05 Amendment by Plan Administrator.** The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations, revenue rulings, other statements published by the Internal Revenue Service (including model and sample amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved Plans may be applied to all Employers who have adopted the Plan. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

For purposes of reliance on the advisory letter, the Plan Administrator shall no longer have authority to amend the Plan on behalf of the Employer as of the date of the adoption of an Employer amendment to the Plan to incorporate a type of plan not allowable in the volume submitter program described in section 16.03 of Revenue Procedure 2011-49 (or successor guidance) or as of the date the Internal Revenue Service notifies the Plan Administrator that the Plan is being treated as an individually designed plan pursuant to section 24.03 of Revenue Procedure 2011-49 (or successor guidance).

- 14.06 Optional Provisions.** Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.
- 14.07 Failure of Qualification.** If the Employer's plan fails to attain or retain qualification, such plan will no longer participate in this Plan and will be considered an individually designed plan.

XV. ADMINISTRATION

- 15.01 Powers of the Employer.** The Employer shall have the following powers and duties:
- (a) To appoint and remove, with or without cause, the Plan Administrator;
 - (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;

- (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
- (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
- (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
- (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties, subject to the oversight by the Employer:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by the Code.

15.03 Protection of the Employer. The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

15.04 Protection of the Plan Administrator. The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

15.05 Resignation or Removal of Plan Administrator. The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the

Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

- 15.06 No Termination Penalty.** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.
- 15.07 Decisions of the Plan Administrator.** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

XVI. MISCELLANEOUS

- 16.01 Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.
- 16.02 Rights to Trust Assets.** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.
- 16.03 Nonalienation of Benefits.** Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.
- 16.04 Qualified Domestic Relations Order.** Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.
- 16.05 Nonforfeitability of Benefits.** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/ she becomes entitled in accordance with the provisions of the Plan.
- 16.06 Incompetency of Payee.** In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

16.07 Inability to Locate Payee. Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

16.08 Mergers, Consolidations, and Transfer of Assets. The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

16.09 Employer Records. Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.

16.10 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

16.11 Applicable Law. The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.

16.12 Electronic Communication and Consent. Unless expressly provided otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application.** Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.06.
- 17.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the one-hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Optional Survivor Annuity.** For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period, provided, however, that this Section shall apply only to the extent the Plan makes another survivor annuity available.
- 17.04 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.
- 17.05 Notice Requirements.**
- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than one-hundred eighty (180) days (or ninety (90) days for notices given in Plan Years before January 1, 2007) prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than thirty (30) days after the written explanation was provided to the Participant, provided that the following requirements are met:
- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

- (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
 - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
 - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.04, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
- (ii) a reasonable period ending after the individual becomes a Participant;
- (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;
- (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant’s failure to elect another benefit.

17.06 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Annuity Starting Date. The first day of the first period for which an amount is paid as an annuity or any other form.

- (b) **Election Period.** The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation. Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.05(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.
- (c) **Earliest Retirement Age.** The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) **Qualified Election.** A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.05.

- (e) **Qualified Joint and Survivor Annuity.** An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) **Spouse (Surviving Spouse).** The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) **Straight Life Annuity.** An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.

- (h) **Vested Account Balance.** The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.07 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan. Eligibility for Final Pay Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

- (a) **Employer Final Pay Contributions.** The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.
- (b) **Employee Designated Final Pay Contributions.** The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

18.03 Equivalencies. The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

18.04 Excess Contributions. Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

- 19.01 Eligibility.** Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement (“Accrued Leave”), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.
- 19.02 Contribution Amount.** At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.
- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer’s contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant’s Accrued Leave, as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee’s election shall remain in force and may not be revised or revoked.

The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be “picked up” by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

- 19.03 Equivalencies.** The Accrued Leave Contribution shall be determined by multiplying the Participant’s current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.
- 19.04 Excess Contributions.** Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant’s leave bank.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by Vantage Trust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.

3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
 4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

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

VANTAGETRUST COMPANY

By: 
Name: Paul F. Gallagher
Title: Assistant Secretary



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Plan Description: Volume Submitter Money Purchase Pension Plan
FFN: 315D0880003-001 Case: 201200590 EIN: 23-7268394
Letter Serial No: J593644a
Date of Submission: 04/02/2012

ICMA RETIREMENT CORP
777 NORTH CAPITOL ST. NE, SUITE 600
WASHINGTON, DC 20002

Contact Person:
Janell Hayes
Telephone Number:
513-263-3602
In Reference To: TEGE:EP:7521
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the practitioner on behalf of employers must provide the date of adoption by the practitioner.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of Code sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Letter 4333

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.

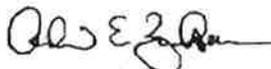
The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination, and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman
Director, Employee Plans Rulings and Agreements



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-212-21266-201405-W1371
REV 3/2015



2/18/2016

File #: 1348-16 Item #: C.

Indian Wells City Council ***Staff Report - Finance***

City Treasurer's Report for December 2015

RECOMMENDED ACTION:

Council **RECEIVES** and **FILES** the City Treasurer's Report for December 2015.

DISCUSSION:

Staff provides Council with a monthly update to the Treasurer's Report. The Report presents the City's cash activity and investment portfolio and provides reconciliation between investment balances and the General Ledger. Specifically, the report provides information on the types of investments, dates of maturities, costs, updated market value of securities, and rates of interest earned in the portfolio.

Related to the Treasurer's report, the City maintains a written investment policy in compliance with legal requirements of Government Code section 53600 and governs the investments made by the City. The City invests in U.S. treasuries, federal agency securities, medium term corporate notes, municipal bonds, federally insured certificates of deposit, and overnight cash investments. Criteria for selecting investments in order of priority are: (1) safety, (2) liquidity and (3) yield.

As of December 31, 2015:

- The City's cash and investments totaled \$40,904,188.33
- The City's portfolio earned a 1.441% rate of return.

ATTACHMENT:

1. City Treasurer's Report for December 2015

NET CASH & INVESTMENT SUMMARY DECEMBER, 2015

	<u>December</u> <u>2015</u>	<u>December</u> <u>2014</u>
GENERAL FUND		
101- GENERAL	\$ 6,148,829.67	\$ 3,988,518.45
TOTAL GENERAL FUND	6,148,829.67	3,988,518.45
SPECIAL REVENUE FUNDS		
202 - TRAFFIC SAFETY	0.42	0.07
203 - PUBLIC SAFETY 1/2 CENT SALES TAX	12,242.49	10,231.20
204 - MEASURE "A"	14,933.48	12,612.69
209 - F.A.M.D. #1	1,829,138.73	2,148,859.66
210 - SCAQMD (VEHICLE REG.)	3,234.34	963.75
211 - AB 3229 COPS FUNDING	6,310.40	0.82
214 - GAS TAX 2103 MAINTENANCE	24,642.56	33,340.57
215 - GAS TAX 2105 MAINTENANCE	10,397.11	9,979.40
216 - GAS TAX 2106 CONSTRUCT/MAINT	4,373.85	2,388.50
217 - GAS TAX 2107 MAINTENANCE	0.16	568.60
218 - GAS TAX 2107.5 ENG./ADMIN	4,582.16	4,515.16
228 - EMERG. UPGRADE SERVICES	3,293,049.96	3,027,947.74
247 - AB 939 RECYCLING FUND	281,835.36	222,533.39
248 - SOLID WASTE	219,906.44	208,951.26
251 - STREET LIGHTING DISTRICT 2000-1	5,319.68	4,032.22
253- INDIAN WELLS VILLAS OPERATIONS	985,212.50	971,860.31
254- MOUNTAIN VIEW VILLAS OPERATIONS	1,192,399.10	946,542.12
256- HOUSING AUTHORITY	3,019,314.67	2,683,951.74
260 - IWGR OPERATIONS	0.00	357,971.54
271 - ELDORADO DRIVE LLM D	79,848.88	78,425.20
272 - MONTECITO/STARDUST LLM D	(5,457.48)	(4,596.16)
273 - CASA DORADO LLM D	3,455.92	3,435.23
274 - THE COVE LLM D	3,304.98	3,274.98
275 - SH 111/IWGR (ENTRANCE) LLM D	272,059.01	256,482.62
276 - CLUB/IW LANE LLM D	50,302.96	47,857.48
277 - COLONY LLM D	17,927.42	21,384.32
278 - COLONY COV ESTATES LLM D	57,122.96	54,515.14
279 - DESERT HORIZONS LLM D	50,069.55	45,241.77
280 - MOUNTAIN GATE LLM D	66,971.67	61,802.19
281 - MOUNTAIN GATE ESTATES LLM D	40,109.88	35,722.59
282 - VILLAGIO LLM D	206,782.93	181,396.84
283 - VAIDYA LLM D	28,066.03	28,722.00
284 - CLUB, SOUTH OF 111 LLM D	10,083.17	8,839.06
285 - MONTELENA LLM D	(4,103.18)	(7,968.78)
286 - SUNDANCE LLM D	7,711.77	5,150.71
287 - PROVINCE LLM D	68,632.06	63,388.16
288 - PROVINCE DBAD	477,505.77	425,932.94
TOTAL SPECIAL REVENUE FUNDS	12,337,287.71	11,956,257.03
CAPITAL PROJECT FUNDS		
314 - PARK-IN-LIEU FEES	0.20	0.20
315 - CITYWIDE PUBLIC IMPROVEMENT FEE	0.26	0.26
316 - CAPITAL IMPROVEMENT	3,420,539.47	3,854,338.93
319 - ART IN PUBLIC PLACES	328,547.79	402,426.11
321 - HIGHWAY 111 CIRCULATION IMP FEE	0.70	0.70
TOTAL CAPITAL PROJECT FUNDS	3,749,088.42	4,256,766.20

CITY OF INDIAN WELLS
NET CASH & INVESTMENT SUMMARY DECEMBER, 2015
 PAGE 2

	December 2015	December 2014
REPLACEMENT FUNDS		
326 - INFRASTRUCTURE CAPITAL	8,527,662.00	7,060,363.00
327 - FF&E ROLLING STOCK CAPITAL	2,346,031.00	2,311,144.00
328 - GOLF RESORT CAPITAL	4,065,905.00	4,005,438.00
329 - HOUSING VILLAS CAPITAL	3,387,879.00	3,337,495.00
330 - FACILITIES CAPITAL	2,346,098.00	2,311,210.00
TOTAL REPLACEMENT FUNDS	20,673,575.00	19,025,650.00
SUCCESSOR AGENCY FUNDS		
453 - RDA (WHITEWATER)	(17,384.74)	205,086.92
456 - RDA OBLIGATION RETIREMENT	0.00	0.00
TOTAL SUCCESSOR AGENCY FUNDS	(17,384.74)	205,086.92
ENTERPRISE FUNDS		
560 - INDIAN WELLS GOLF RESORT	(3,291,667.37)	0.00
561 - CLUB DRIVE PROPERTY	49,815.24	0.00
TOTAL ENTERPRISE FUNDS	(3,241,852.13)	0.00
INTERNAL SERVICE FUNDS		
601 - OPEB BENEFIT FUND	479,750.57	1,309,534.90
TOTAL INTERNAL SERVICE FUNDS	479,750.57	1,309,534.90
RESERVE FUNDS		
602 - COMPENSATED ABSENCES	554,897.00	546,644.00
603 - SELF INSURANCE	0.00	10,957.00
TOTAL RESERVE FUNDS	554,897.00	557,601.00
TRUST & AGENCY FUNDS		
732 - SPECIAL DEPOSITS	219,996.83	567,968.28
760 - VISITOR COMMITTEE	0.00	197,728.38
TOTAL TRUST & AGENCY FUNDS	219,996.83	765,696.66
TOTAL ALL FUNDS	40,904,188.33	42,065,111.16
FISCAL AGENTS		
253 - INDIAN WELLS VILLAS	93,676.43	38,685.59
254 - MOUNTAIN VIEW VILLAS	158,216.67	177,138.09
560 - INDIAN WELLS GOLF RESORT	927,005.82	505,123.11
453 - UNION BANK OF CALIFORNIA TRUSTEE	796,320.30	784,081.50
TOTAL FISCAL AGENTS	1,975,219.22	1,505,028.29
TOTAL ALL FUNDS & FISCAL AGENTS	\$ 42,879,407.55	\$ 43,570,139.45

City of Indian Wells
Bank Reconciliation Report - City Held Cash
 Finance Department

MONTH: **December 31, 2015**

Investment #	Investment Type	Investment Description	Book Value
Bank Checking & Sweep			
1		Pacific Western Bank - Sweep 45-301117	\$ 635,248.04
2		Pacific Western Bank - Accts. Payable 45-523411	0.00
3		Pacific Western Bank - Payroll 45-501752	0.00
4		Union Bank of CA - Sweep Investment 217-0000121	54,772.49
19		Petty Cash	1,400.00
			691,420.53
Managed Pool Accounts			
21		Local Agency Investment Fund - City 98-33-385	6,181,135.16
			6,181,135.16
Bank Certificates of Deposit			
316		Certificate of Deposit-GE Capital Retail Bank 36161NYT9	250,000.00
317		Certificate of Deposit-Ally Bank 02005QF65	250,000.00
329		Certificate of Deposit-Sallie Mae	250,000.00
385		Certificate of Deposit-Wells Fargo Bank 94986TLX3	250,000.00
337		Certificate of Deposit-Am Ex Centurion 02587DKR8	250,000.00
338		Certificate of Deposit-Goldman Sachs Bank 38143A5L5	250,000.00
339		Certificate of Deposit-JP Morgan Chase 48124JSY5	250,000.00
348		Certificate of Deposit-Citicorp Bank 17284CJG0	250,000.00
349		Certificate of Deposit-Compass Bank 20451PBG0	250,000.00
350		Certificate of Deposit-Am Ex Centurion 02587CAJ9	250,000.00
351		Certificate of Deposit-Barklays Bank 06740KHK6	250,000.00
353		Certificate of Deposit-People's United Bank 71270QGS9	250,000.00
354		Certificate of Deposit-Capital One Bank 140420NX4	250,000.00
355		Certificate of Deposit-State Bank of India NY, NY 856284	250,000.00
358		Certificate of Deposit-BMW Bank North America	250,000.00
360		Certificate of Deposit-Security Federal 81423LBN1	250,000.00
361		Certificate of Deposit-First Bank of Highland 319141CQ8	250,000.00
362		Certificate of Deposit-Discover Bank 254672HV3	250,000.00
364		Certificate of Deposit-Pacific Western Bank	250,000.00
390		Certificate of Deposit-HSBC Bank USA 40434AH51	250,000.00
			5,000,000.00
Medium Term Corporate Notes			
296		Barclays Bank Corporate Note 06738JVS0	1,000,000.00
322		AT&T Inc. 00206RBF8	1,001,358.09
331		JP Morgan 46625HJG6	1,001,242.07
346		General Electric Cap Corp 36962G6W9	1,003,800.85
369		GE Capital Financial 36163FP64	245,000.00
373		Caterpillar Financial Services Corp 14912L6F3	1,016,078.95
375		Berkshire Hathaway 084664BW0	1,001,698.30
			6,269,178.26
Federal Agency Issues			
332		Federal Home Loan Bank 313381YG4	2,000,000.00
334		Freddie Mac 3134G33S7	1,000,000.00
335		Fannie Mae 3136GICF4	1,000,000.00
341		Federal Farm Credit Bank 3133EC7L2	999,445.58
342		Federal Farm Credit Bank 3133ECDX9	999,028.10
344		Federal Home Loan Mtg Corp 3134G43H9	2,000,000.00
345		Federal National Mortgage Assn 313G0WNN9	2,000,000.00
347		Federal National Mortgage Assn 3136G1FL8	1,005,958.97
356		Fannie Mae 3136G26U6	2,000,000.00
357		Fannie Mae 3136G26N2	1,000,000.00
367		Federal Home Loan Bank 3130A4S52	1,000,000.00
368		Federal Home Loan Bank 3130A4S86	1,000,000.00
374		Federal Home Loan Bank 3130A5GC7	999,558.18
376		Federal Home Loan Mtg Corp 3134G66P3	2,000,000.00
379		Federal Home Loan Mtg Corp 3134G6V42	2,000,000.00
378		Federal Home Loan Bank 3130A5L98	1,000,000.00
380		Federal National Mortgage Assoc 3136G2L47	1,000,000.00
			23,003,990.83
Total Pooled Cash and Investments			\$ 41,145,724.78
Fair Value Increase (over cost)			(11,159.59)
Outstanding items			
Outstanding Warrants/Wire Transfers			(6,236.07)
Reconciliation Item			(216,893.27)
Reconciliation Item			(2,095.68)
Reconciliation Item			(7,689.84)
Reconciliation Item			(245.00)
Credit Card in Transit			2,783.00
Total Outstanding Items			(230,376.86)
Reconciled Bank Balance			\$ 40,904,188.33
General Ledger Balance			\$ 40,904,188.33
			0.00

City of Indian Wells

Trustee Reconciliation Report - Cash and Investments with City Agents

Finance Department

MONTH: **December 31, 2015**

Investment # Investment Description

RDA Series 2006 A Bonds \$ 8.72 \$ 8.72

RDA Series 2010 A Bonds \$ 780,685.57 \$ 780,685.57

RDA Series 2014 A Bonds \$ 29.28 \$ 29.28

RDA Series 2015 A Bonds \$ 15,596.73 \$ 15,596.73

Other Trustees

6	Indian Wells Golf Resort	927,005.82	
7	Indian Wells Villas	93,676.43	
10	Mountain View Villas	\$ <u>158,216.67</u>	\$ 1,178,898.92

Total Cash and Investments with City Agents \$ **1,975,219.22**

Fair Value Increase (over cost)

Reconciled Bank Balance \$ **1,975,219.22**

General Ledger Balance \$ **1,975,219.22**

0.00

**The City of Indian Wells
Portfolio Management
Portfolio Summary
December 31, 2015**

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Bank Certificates of Deposit	4,500,000.00	4,497,592.50	4,500,000.00	10.94	1,553	817	1.568	1.590
Certificates of Deposit	245,000.00	242,537.75	245,000.00	0.60	1,830	1,564	1.775	1.800
Managed Pool Accounts - LAIF	6,181,135.16	6,181,135.16	6,181,135.16	15.02	1	1	0.369	0.374
Money Market Sweep/Checking Account	691,420.53	691,420.53	691,420.53	1.68	1	1	0.246	0.249
Negotiable CD's	500,000.00	500,216.75	500,000.00	1.22	1,827	1,293	1.212	1.229
Medium Term Corporate Notes	6,000,000.00	6,003,320.00	6,024,178.26	14.64	1,667	783	1.846	1.871
Federal Agency Issues - Callables	23,000,000.00	22,938,790.00	23,003,990.83	55.91	1,929	1,302	1.601	1.623
Investments	41,117,555.69	41,055,012.69	41,145,724.78	100.00%	1,526	957	1.422	1.441

Total Earnings	December 31 Month Ending
Current Year	44,683.84
Average Daily Balance	40,924,987.59
Effective Rate of Return	1.29%

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

Kevin McCarthy, Finance Director

1/6/2016

**The City of Indian Wells
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity	Maturity Date
Bank Certificates of Deposit												
SYS364	364	Pacific Western Bank		03/10/2015	250,000.00	250,000.00	250,000.00	1.000		1.000	100	04/10/2016
SYS317	317	Ally Bank		05/23/2012	250,000.00	250,605.00	250,000.00	1.250		1.233	143	05/23/2016
795450NW1	329	Sallie Mae		08/15/2012	250,000.00	250,792.50	250,000.00	1.250		1.233	227	08/15/2016
38143A5L5	338	Goldman Sachs Bank		02/06/2013	250,000.00	250,235.00	250,000.00	1.050		1.036	402	02/06/2017
SYS316	316	GE Capital Retail Bank		05/25/2012	250,000.00	252,255.00	250,000.00	1.800		1.800	510	05/25/2017
17284CJG0	348	CIT BANK		07/24/2013	250,000.00	251,192.50	250,000.00	1.400		1.381	570	07/24/2017
02587DKR8	337	American Express Centurion		02/06/2013	250,000.00	251,072.50	250,000.00	1.700		1.677	579	08/02/2017
319141CQ8	361	FIRST BANK OF HIGHLAND		10/15/2014	250,000.00	249,275.00	250,000.00	1.250		1.233	654	10/16/2017
81423LBN1	360	SECURITY FEDERAL		10/15/2014	250,000.00	249,317.50	250,000.00	1.250		1.233	654	10/16/2017
48124JSY5	339	JP Morgan Chase		02/27/2013	250,000.00	247,762.50	250,000.00	1.125		1.110	780	02/19/2018
20451PBG0	349	Compass Bank		07/24/2013	250,000.00	251,900.00	250,000.00	1.700		1.677	935	07/24/2018
254672HV3	362	Discover Bank		02/25/2015	250,000.00	248,812.50	250,000.00	1.600		1.578	1,151	02/25/2019
06740KHK6	351	Barclays Bank PLC		07/23/2014	250,000.00	249,340.00	250,000.00	2.100		2.071	1,299	07/23/2019
02587CAJ9	350	American Express Bank FSB		07/24/2014	250,000.00	249,415.00	250,000.00	2.000		1.973	1,300	07/24/2019
140420NX4	354	Capital One Bank CD		09/10/2014	250,000.00	248,870.00	250,000.00	1.900		1.874	1,348	09/10/2019
71270QGS9	353	People's United Bank CD		09/10/2014	250,000.00	248,872.50	250,000.00	1.950	AAA	1.923	1,348	09/10/2019
856284Z98	355	State Bank of India NY, NY CD		09/11/2014	250,000.00	249,042.50	250,000.00	2.150		2.121	1,349	09/11/2019
05580AAW4	358	BMW BANK NORTH AMERICA		09/26/2014	250,000.00	248,832.50	250,000.00	2.100		2.071	1,364	09/26/2019
Subtotal and Average			4,500,000.00		4,500,000.00	4,497,592.50	4,500,000.00			1.568	817	
Certificates of Deposit												
36163FP64	369	GE Capital Financial inc		04/10/2015	245,000.00	242,537.75	245,000.00	1.800		1.775	1,564	04/13/2020
Subtotal and Average			245,000.00		245,000.00	242,537.75	245,000.00			1.775	1,564	
Managed Pool Accounts - LAIF												
SYS21	21	LAIF - City			6,181,135.16	6,181,135.16	6,181,135.16	0.374		0.369	1	
SYS23	23	LAIF - Redevelopment			0.00	0.00	0.00	0.233		0.230	1	
Subtotal and Average			5,858,554.51		6,181,135.16	6,181,135.16	6,181,135.16			0.369	1	
Money Market Sweep/Checking Account												
SYS1	1	Pacific Western Bank			635,248.04	635,248.04	635,248.04	0.250		0.247	1	
SYS2	2	Pacific Western - Acct Payable		07/01/2014	0.00	0.00	0.00			0.000	1	
SYS3	3	Pacific Western-Payroll		07/01/2014	0.00	0.00	0.00			0.000	1	
SYS4	4	Union Bank-Checking			54,772.49	54,772.49	54,772.49	0.250		0.247	1	
SYS19	19	Petty Cash		07/01/2014	1,400.00	1,400.00	1,400.00			0.000	1	

**The City of Indian Wells
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity	Maturity Date
Subtotal and Average			1,026,788.19		691,420.53	691,420.53	691,420.53			0.246	1	
Negotiable CD's												
94986TLX3KK	385	Wells Fargo CD		01/30/2013	250,000.00	250,216.75	250,000.00	0.850		0.946	761	01/31/2018
40434AH51	390	HSBC BANK USA		12/30/2015	250,000.00	250,000.00	250,000.00	1.500		1.479	1,825	12/30/2020
Subtotal and Average			266,129.03		500,000.00	500,216.75	500,000.00			1.212	1,293	
Medium Term Corporate Notes												
06738JVS0	296	Barclays Bank PLC		10/27/2011	1,000,000.00	1,004,310.00	1,000,000.00	3.500	AA	3.452	300	10/27/2016
00206RBF8	322	AT&T INC		06/21/2012	1,000,000.00	1,002,760.00	1,001,358.09	1.600		1.479	517	06/01/2017
46625HJG6	331	J P Morgan		01/28/2013	1,000,000.00	998,660.00	1,001,242.07	1.800		1.713	755	01/25/2018
36962G6W9	346	General Elec. Cap Crp		05/01/2013	1,000,000.00	1,003,270.00	1,003,800.85	1.625		1.430	822	04/02/2018
084664BW0	375	Berkshire Hathaway		06/09/2015	1,000,000.00	991,660.00	1,001,698.30	1.300	AA	1.210	865	05/15/2018
14912L6F3	373	Catapillar Financial Services		04/28/2015	1,000,000.00	1,002,660.00	1,016,078.95	2.250		1.795	1,430	12/01/2019
Subtotal and Average			6,024,492.73		6,000,000.00	6,003,320.00	6,024,178.26			1.846	783	
Federal Agency Issues - Callables												
313381YG4	332	Fed. Home Loan Bank		02/20/2013	2,000,000.00	2,000,560.00	2,000,000.00	1.000		0.986	781	02/20/2018
3134G43H9	344	Fed. Home Loan Mtg Corp		04/30/2013	2,000,000.00	2,000,560.00	2,000,000.00	1.060		1.045	850	04/30/2018
3135G0WN9	345	Fed. Nat'l Mortgage Assoc		04/30/2013	2,000,000.00	1,981,140.00	2,000,000.00	1.000		0.986	850	04/30/2018
3134G33S7	334	Fed. Home Loan Mtg Corp		01/24/2013	1,000,000.00	989,720.00	1,000,000.00	1.000		0.986	927	07/16/2018
3136G1CF4	335	Fed. Nat'l Mortgage Assoc		01/30/2013	1,000,000.00	992,470.00	1,000,000.00	1.000	AAA	0.986	941	07/30/2018
3136G26N2	357	Fed. Nat'l Mortgage Assoc		09/26/2014	1,000,000.00	1,003,520.00	1,000,000.00	1.600		1.578	999	09/26/2018
3133EC7L2	341	Fed. Farm Credit Bank		03/22/2013	1,000,000.00	988,180.00	999,445.58	1.290		1.289	1,260	06/14/2019
3136G26U6	356	Fed. Nat'l Mortgage Assn (c)		10/07/2014	2,000,000.00	2,016,260.00	2,000,000.00	2.000	AAA	1.973	1,385	10/17/2019
3130A4S52	367	Fed. Home Loan Bank		03/30/2015	1,000,000.00	1,000,350.00	1,000,000.00	1.000		2.178	1,550	03/30/2020
3130A4S86	368	Fed. Home Loan Bank		03/30/2015	1,000,000.00	1,000,640.00	1,000,000.00	1.250		2.112	1,550	03/30/2020
3130A5GC7	374	Fed. Home Loan Bank		06/02/2015	1,000,000.00	1,000,660.00	999,558.18	1.000		2.005	1,609	05/28/2020
3134G66P3	376	Fed. Home Loan Mtg Corp		06/17/2015	2,000,000.00	2,002,040.00	2,000,000.00	1.125		2.261	1,629	06/17/2020
3134G6V42	379	Fed. Home Loan Mtg Corp		06/29/2015	2,000,000.00	1,990,620.00	2,000,000.00	2.000		1.973	1,641	06/29/2020
3130A5L98	378	Fed. Home Loan Bank		06/30/2015	1,000,000.00	1,003,020.00	1,000,000.00	2.000		1.973	1,642	06/30/2020
3136G2L47	380	Fed. Nat'l Mortgage Assoc		06/30/2015	1,000,000.00	1,001,060.00	1,000,000.00	1.800		1.775	1,642	06/30/2020
3136G1FL8	347	Fed. Nat'l Mortgage Assoc		04/26/2013	1,000,000.00	986,030.00	1,005,958.97	1.820		1.660	1,700	08/27/2020
3133ECDX9	342	Fed. Farm Credit Bank		03/25/2013	1,000,000.00	981,960.00	999,028.10	1.840		1.835	1,861	02/04/2021
Subtotal and Average			23,004,023.13		23,000,000.00	22,938,790.00	23,003,990.83			1.601	1,302	

**The City of Indian Wells
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 360	Days to Maturity
Total and Average			40,924,987.59		41,117,555.69	41,055,012.69	41,145,724.78			1.422	957

**2006 A Bonds
Portfolio Management
Portfolio Summary
December 31, 2015**

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	8.72	8.72	8.72	100.00	1	1	0.358	0.363
Investments	8.72	8.72	8.72	100.00%	1	1	0.358	0.363

Total Earnings	December 31 Month Ending
Current Year	0.00
Average Daily Balance	8.72
Effective Rate of Return	0.00%


Kevin McCarthy, Agency Treasurer


1/7/2016

**2006 A Bonds
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Money Market Sweep/Checking Account												
SYS13	13	2006A Good Faith Deposit			0.00	0.00	0.00	5.080		5.080	1	
SYS15	15	2006 A Bonds Reserve			1.00	1.00	1.00			0.000	1	
SYS14	14	2006 A Bonds Interest			4.72	4.72	4.72	0.410		0.410	1	
SYS12	12	UBC Cost Of Issuance Escrow			0.00	0.00	0.00	5.020		5.020	1	
SYS10	10	Fidelity Institutional Money M			0.00	0.00	0.00	5.360		5.360	1	
SYS17	17	Principal Account			3.00	3.00	3.00	0.410		0.410	1	
Subtotal and Average			8.72		8.72	8.72	8.72			0.363	1	
Total and Average			8.72		8.72	8.72	8.72			0.363	1	

**RDA Series 2010 A Bonds
Portfolio Management
Portfolio Summary
December 31, 2015**

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	780,685.57	780,685.57	780,685.57	100.00	1	1	0.000	0.000
Investments	780,685.57	780,685.57	780,685.57	100.00%	1	1	0.000	0.000

Total Earnings	December 31 Month Ending
Current Year	0.00
Average Daily Balance	780,674.93
Effective Rate of Return	0.00%

Kevin
Kevin McCarthy, Agency Treasurer

1/6/2016

**RDA Series 2010 A Bonds
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Money Market Sweep/Checking Account												
SYS1	1	2010 A Bonds Reserve		07/01/2014	780,645.00	780,645.00	780,645.00			0.000	1	
SYS14	13	2010 A Bonds Principal		07/01/2014	38.71	38.71	38.71			0.000	1	
SYS4	4	2010 A Bonds Interest			1.86	1.86	1.86	0.530		0.530	1	
SYS7	7	Local Agency Investment Fund			0.00	0.00	0.00	0.530		0.530	1	
SYS2	2	Blackrock Provident T-Fund		07/01/2014	0.00	0.00	0.00			0.000	1	
SYS3	3	UBC Cost Of Issuance Escrow		07/01/2014	0.00	0.00	0.00			0.000	1	
Subtotal and Average			780,674.93		780,685.57	780,685.57	780,685.57			0.000	1	
Total and Average			780,674.93		780,685.57	780,685.57	780,685.57			0.000	1	

**Series 2014 A Bonds
Portfolio Management
Portfolio Summary
December 31, 2015**

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	29.28	29.28	29.28	100.00	1	1	0.000	0.000
Investments	29.28	29.28	29.28	100.00%	1	1	0.000	0.000

Total Earnings	December 31 Month Ending
Current Year	0.00
Average Daily Balance	29.00
Effective Rate of Return	0.00%

Kevin McCarthy 1/6/2016
Kevin McCarthy, Agency Treasurer

Reporting period 12/01/2015-12/31/2015

Run Date: 01/06/2016 - 14:01

No fiscal year history available

**Series 2014 A Bonds
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Money Market Sweep/Checking Account												
SYS28	28	2014 A Bonds Reserve		05/01/2015	1.00	1.00	1.00			0.000	1	
SYS26	26	2014 A Bonds Principal		08/26/2014	6.72	6.72	6.72			0.000	1	
SYS25	25	2014 A Bonds Interest		08/26/2014	1.94	1.94	1.94			0.000	1	
SYS27	27	2014 Debt Service		09/08/2014	19.62	19.62	19.62			0.000	1	
SYS24	1	UBC Cost Of Issuance Escrow		07/01/2014	0.00	0.00	0.00			0.000	1	
Subtotal and Average			29.00		29.28	29.28	29.28			0.000	1	
Total and Average			29.00		29.28	29.28	29.28			0.000	1	

**2015 A Bonds
Portfolio Management
Portfolio Summary
December 31, 2015**

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
Money Market Sweep/Checking Account	15,596.73	15,596.73	15,596.73	100.00	1	1	0.000	0.000
Investments	15,596.73	15,596.73	15,596.73	100.00%	1	1	0.000	0.000

Total Earnings	December 31 Month Ending
Current Year	0.00
Average Daily Balance	15,596.73
Effective Rate of Return	0.00%

Kevin McCarthy 1/6/2016
Kevin McCarthy, Agency Treasurer

**2015 A Bonds
Portfolio Management
Portfolio Details - Investments
December 31, 2015**

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
Money Market Sweep/Checking Account												
SYS22	22	UBC Cost Of Issuance Escrow		08/11/2015	15,596.73	15,596.73	15,596.73			0.000	1	
Subtotal and Average			15,596.73		15,596.73	15,596.73	15,596.73			0.000	1	
Total and Average			15,596.73		15,596.73	15,596.73	15,596.73			0.000	1	



2/18/2016

File #: 1347-16 Item #: A.

Indian Wells City Council ***Staff Report - Public Works***

Engineering Design Contract for Cook Street Rehabilitation

RECOMMENDED ACTIONS:

Council **AWARDS** the contract to CNS Engineers, Inc. for Engineering Design Services for Cook Street Rubberized Pavement Overlay/Rehabilitation; and

AUTHORIZES and **DIRECTS** the City Manager to execute a contract for \$82,000; and

APPROVES a requisition for \$82,000 to CNS Engineers, Inc. for same.

DISCUSSION:

The City adopted a Pavement Management Program (PMP) in 2015 to evaluate the condition of all publicly maintained roads. The PMP report is used by Staff to develop a maintenance priority schedule for all publicly maintained roadways in the City.

The section of Cook Street between Highway 111 and Fred Waring Drive is identified on the PMP as a priority. The condition of the pavement on Cook Street has deteriorated with areas of weathering and noticeable cracking, and the build-up of past asphalt overlays has reduced the median curb to half its original height. As a result, the roadway needs reconstruction consisting of the removal and replacement of all asphalt paving.

In addition, the Americans with Disabilities Act (ADA) requires handicap access ramp improvements at all public intersections when streets, roads or highways are altered through resurfacing. The engineering design will determine the extent and location of pavement repairs, as well as intersection corner modifications to meet ADA requirements.

Requests for Proposals to solicit consultants for roadway design were sent to three (3) qualified engineering firms; Wallace and Associates, CNS Engineers Inc., and Dudek. Wallace and Associates declined to submit a proposal because of scheduling conflicts with the City's project timing. Both Dudek and CNS Engineers, Inc. submitted proposals.

File #: 1347-16 **Item #:** A.

CNS Engineers, Inc.	\$81,825
Dudek	\$55,101

Staff favors the CNS Engineers, Inc. proposal as it is a comprehensive approach to the roadway design, including additional survey data, compliance with ADA requirements, and competitive hourly rates.

FISCAL IMPACT:

The proposed cost for engineering design for repaving Cook Street is \$82,000. Funds are available in the City's Capital Improvement fund account.

ATTACHMENTS:

1. Contract
2. Requisition



**CITY OF INDIAN WELLS
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this **18th** day of **February, 2016**, 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 **CNS Engineers, Inc.**, a **California Corporation** with its principal place of business at **11870 Pierce Street, Ste. 265 Riverside, CA 92505** (“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 **professional engineering and design** 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 **Cook Street Rubberized Pavement Overlay/Rehabilitation Federal-Aid Project No. STPL-5401 (003)** project (“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 **engineering and design** 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 **March 7, 2016 to June 30, 2016** 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: Public Works Director.

3.2.5 City's Representative. The City hereby designates the Public Works Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this 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 James J. Lu, P.E., S.E., 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*: \$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 Professional Liability (Errors and Omissions) Insurance. 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 \$1,000,000 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 its employees 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. Consultant is not responsible for general job site safety, which remains the obligation of Contractor.

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 **Eighty-two Thousand and 00/100 Dollars (\$82,000)** without written approval of City's **Public Works 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 which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

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

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 [Intentionally Omitted]

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant:

CNS Engineers, Inc.
11870 Pierce Street, Ste. 265
Riverside, CA 92505
Attn: James Lu, P.E., S.E.

City:

City of Indian Wells
44-950 Eldorado Drive, Indian Wells
California 92210-7497
Attn: Public Works Department

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. Upon full payment to Consultant for its services this Agreement creates a non-exclusive and perpetual license for City 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 CITY, its officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent such claim arises out of or is incident to the negligence, recklessness, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and reasonable attorneys fees, expert witness fees and other related costs and expenses of defense. Consultant shall defend, with counsel of CITY's choosing and 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 officials, officers, employees and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against CITY, its officials, officers, employees and agents in any such suits, actions or other legal proceedings. Consultant shall also reimburse CITY for the cost of any settlement paid by CITY arising out of any such claims, demands, causes of action, costs, expenses, liabilities, loses, damages, injuries, suits, actions, or other legal proceedings. Such reimbursement shall include payment for CITY's attorney's fees and costs, including expert witness fees. Consultant shall reimburse CITY, its officials, officers, employees and agents for any and all legal expenses and costs, including expert witness fees, 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 officials, officers, employees and agents.

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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY OF INDIAN WELLS

CNS Engineers, Inc.

Wade McKinney
City Manager

James J. Lu, P.E., S.E.
President

Attest:

Anna Grandys
City Clerk

Huimin Huang
CFO

Approved as to form:

Stephen P. Deitsch
City Attorney

Recommended for Approval:

Ken Seumalo, P.E.
Public Works Director

EXHIBIT "A"

SCOPE OF SERVICES

The design services to be furnished for this project by the Consultant shall include, but not be limited to, the preparation and submittal of a Plans, Specifications, and Estimate (PS&E), and Bid Package. The PS&E package shall conform to Federal-Aid requirements as applicable. Services and products to be rendered in performing all work associated with project development may include, but may not be limited to:

1. Meetings

- a. Attend an appropriate number of progress meetings with City staff, including but not limited to a pre-design meeting. The Consultant may be required to attend a City Council meeting.

2. Records Research and Initial Field Review

- a. Research and review as-built documents, traffic data, and other available record data.
- b. Perform preliminary field reconnaissance, record photographs of typical and special existing conditions for reference in design.
- c. Measure and record field dimensions as needed to establish quantities for bidding and cross section details.
- d. Be proactive in field review towards discovery of special conditions that might create conflicts or change orders during construction.

3. Utility Coordination

- a. Prepare an initial request for utility information such as atlas sheets, mapping, or as-built plans, and notify of the need to install all planned facilities in the area of construction.
- b. Send the request along with a vicinity map showing the limits of construction describing the nature of the work and depth of expected excavation.
- c. State in the request that utility companies must implement any upgrade of their underground facilities that are anticipated within any moratorium period the City wishes to apply.
- d. Review utility information to determine the impact of the project on the various utilities, including making contacts with each affected utility company to determine profiles of high hazard/high pressure facilities that may interfere with proposed construction.
- e. Provide utility coordination documentation to the City at the conclusion of design.

4. Pavement Engineering

- a. Note specific pavement conditions, especially potential reconstruction areas and special problems that may require a form of pretreatment prior to overlay.
- b. Coordinate pavement sampling and testing, depths of investigation, samples to be obtained and tests to be performed. Coring of existing pavement, base material and subgrade shall be performed at a minimum of eight (8) locations with thicknesses of base, original pavement, overlays and existence of fabric or other interlayers recorded, plus moisture content of subgrade. Two R-values shall be provided. Locations of cores and R-values will be distributed over the length and between lanes as appropriate to provide the apparent pavement construction history based on pavement engineer's observations.
- c. Perform a review of test data to ascertain potential problems with specific strategies, such as geometric constraints or widespread extreme deflection readings indicating potential reconstruction, thin pavement sections, fabric interlayers affecting cold milling, special base materials, etc.
- d. Identify the characteristic level of deterioration indicated by the deflection readings as needing reconstruction, and estimate the quantity of repairs needed for the various likely overlay strategy candidates.
- e. Evaluate special treatments and strategies for resurfacing that will alleviate difficult circumstances on specific segments.
- f. Determine overlay thickness requirements after reconstruction repair areas are eliminated from the analysis using the Asphalt Institute method, and present to City staff the viable strategies that would be recommended as alternatives for pavement upgrades. Value engineering spreadsheet cost breakdowns shall be provided on a square foot basis for each strategy alternate, including comparisons based on projected lifespans. Estimated areas of reconstruction applicable to each strategy shall be averaged into square-foot costs.
- g. Based on the City agreed strategies, incorporate project special conditions, unique engineering and constructability considerations and concerns for overlay, and City agreed preferences into a technical memorandum, including a brief summary of findings and recommendations and all test data, outlining the specific elements to be implemented for pavement upgrade.
- h. Take near completion design plans to the site and mark repair areas in the field with paint and record on the vicinity plan conforming to deflections deleted from the data set, and generally proof overlay design aspects such as special conditions for cold milling, and other treatments.
- i. Monitor inclusion of the field information on the project plans, and prepare typical sections, details, construction notes, and special provisions for overlay and reconstruction, to facilitate proper implementation and enforcement at time of construction.

5. Construction Bid Package Preparation

- a. Develop typical sections for overlay of the pavement in enough detail to fully define the construction to be performed.
- b. All approved plans shall be provided to the City on compact disk in AutoCAD 2008 or higher format, as well as on "D" size Mylar. Plan scale shall be appropriate for scope of work and size of Mylar, as approved by the City.
- c. All areas requiring repair/reconstruction shall be included on the plans, with sufficient detail shown as to size and location.
- d. All utilities requiring adjustment to grade shall be included on the plans.
- e. Prepare Re-Striping plan with details as necessary.
- f. Include with Re-Striping plan, or separately if appropriate, traffic signal loop replacement locations and details.
- g. Prepare quantity calculations and final construction cost estimates in accordance with City requirements utilizing current City of Indian Wells and other agency recent bid data and compare to established project budget. The Consultant shall provide the Engineer's estimate in Excel for Windows format.
- h. Prepare Specification document, which shall include but not be limited to Notice Inviting Bids, General Provisions, Federal-Aid Provisions, and Special Provisions per City of Indian Wells requirements for Formal Bidding. Special provisions will be prepared based on the latest edition of the Standard Specifications for Public Works Construction (Greenbook) Provide detailed specifications to allow for effective quality control for asphalt-rubber production. The Consultant shall provide the Specification document in digital format in Microsoft Word for Windows format.

6. Agency Review

- a. Consultant shall submit PS&E and/or other necessary documents to City to obtain approval. At a minimum, the Consultant should anticipate the following plan check submittals:
 - i. 1st Review - Concept Review
 - ii. 2nd Review - 85-90% Check Plans & Specs
 - iii. 3rd Review - 100% Check Plans, Specs, & Engineer's Estimate
 - iv. 4th Review - Preliminary Final (screen check)

7. Construction Bidding Phase Services

- a. Respond to questions during project advertisement period.
- b. Respond to Requests for Information or other questions during the construction period.
- c. Evaluate need for addenda and prepare project addenda, as necessary and extending from original design scope of work.

8. Project Completion

- a. Prepare and submit Record “as-built” Plans (Mylars) documenting any deviations from original approved plans.

REFERENCE DOCUMENTS PROVIDED TO CONSULTANT

Plans, specifications, bid documents, and construction cost estimates for this project were previously prepared and completed in 2008. These documents shall be provided to the Consultant as reference material. The final design as requested by the Consultant is anticipated to substantially conform to the design shown on the 2008 documents, with the following exceptions:

1. If possible, design shall not decrease the height of the existing median curb face.
2. Design shall include any new repair/reconstruction areas as identified by the Consultant.

EXHIBIT “B”

SCHEDULE OF SERVICES

The term of this Agreement shall be from March 7, 2016 to June 30, 2016 unless earlier terminated as provided herein.

EXHIBIT "C"

COMPENSATION

The total compensation shall not exceed Eighty-two thousand and 00/100 Dollars (\$82,000) based on the following rates:

Project Name: Cook Street Rubberized Pavement Overlay / Rehabilitation										
Consultant: CNS Engineers, Inc.							Date:	2/2/16		
Task No.	Task Description	Principal-In-Charge	Senior Rdwy Manager	Design Engineer	Project Administrator / Controls	0	Total Hours	Labor Cost	Subconsultants Labor Cost	Total Cost
	(loaded billing rates)	\$235.57	\$159.05	\$97.53	\$154.55	\$0.00				
PHASE I - PRELIMINARY ENGINEERING										
A. Project Management and Coordination										
1	Project Management	1	16		1		18	\$ 2,934.90		\$ 2,934.90
B. Project Start-Up										
1	Kick Off Meeting		4				4	\$ 636.20		\$ 636.20
2	Research and Data Gathering		8				8	\$ 1,272.39		\$ 1,272.39
3	Site Review		4				4	\$ 636.20		\$ 636.20
4	Utility Research and Notifications		8	4			12	\$ 1,662.51		\$ 1,662.51
C. Survey and Mapping										
1	Field Survey		4				4	\$ 636.20	\$8,400.00	\$ 9,036.20
2	Prepare Base Map			12			12	\$ 1,170.36		\$ 1,170.36
D. Geotechnical Investigations										
1	Geotechnical Investigations		4				4	\$ 636.20	\$8,435.00	\$ 9,071.20
E. Conceptual Design (35% Design Level)										
1	Pavement Evaluation Analysis		8				8	\$ 1,272.39		\$ 1,272.39
2	Street Plan Layout		14	20			34	\$ 4,177.28		\$ 4,177.28
3	35% Complete Quantities and Estimate		2	4			6	\$ 708.22		\$ 708.22
4	Present Findings	1	8	12			21	\$ 2,678.32		\$ 2,678.32
PHASE II - FINAL DESIGN ENGINEERING										
A. Project Management and Coordination										
1	Project Management	1	24		1		26	\$ 4,207.29		\$ 4,207.29
B. 85% Complete Plans, Specifications & Estimate										
1	85% Plans	2	38	80			120	\$ 14,317.39		\$ 14,317.39
2	85% Estimate		2	4			6	\$ 708.22		\$ 708.22
3	85% Specifications		40				40	\$ 6,361.95		\$ 6,361.95
4	Second City Submittal	2	8	8			18	\$ 2,523.77		\$ 2,523.77
5	2nd Utility Notification		4	6			10	\$ 1,221.37		\$ 1,221.37
C. 100% / Final PS&E										
1	Draft PS&E		12	24			36	\$ 4,249.30		\$ 4,249.30
2	Third City Submittal	2	8	8			18	\$ 2,523.77		\$ 2,523.77
3	City Approval Submittal		8	12			20	\$ 2,442.75		\$ 2,442.75
4	Final Utility Notification		4	6			10	\$ 1,221.37		\$ 1,221.37
PHASE III - POST DESIGN SERVICES										
A. Bidding Assistance										
			10	4			14	\$ 1,980.61		\$ 1,980.61
B. Construction Support										
			10	6			16	\$ 2,175.67		\$ 2,175.67
C. Prepare As-Built Plans										
				6			6	\$ 585.18		\$ 585.18
Total Hours		9	248	216	2	0	475	\$ 62,939.82	\$16,835.00	\$ 79,774.82
								Subtotal Labor Cost w/o ODC	\$79,774.82	119



CITY OF INDIAN WELLS
 44-950 ELDORADO DRIVE
 INDIAN WELLS, CA 92210
 (760) 346-2489

SERVICES REQUISITION

DATE	DEPARTMENT
2/4/2016	Public Works

Terms: **Net 30 Days**

VENDOR: CNS Engineering, Inc.
 11870 Pierce Street, Ste. 265
 Riverside, CA 92505

VENDOR PHONE:
 VENDOR FAX:
 VENDOR EMAIL:
 DEPT. CONTACT: Ken

VENDOR #: 01227

DESCRIPTION	PRICE
FY 15-16 Engineering Design for Cook Street Rubberized Pavement Overlay/Rehabilitation	82,000.00
	-
	-
	-
TOTAL	\$ 82,000.00

ACCOUNT NUMBER	BUDGET AVAILABLE
316.93.00.06731.000	82,000.00
	-
TOTAL	\$ 82,000.00

PREPARED BY: Mirian

DATE: 2/4/2016

REQUISITION CHECKLIST:

<input type="checkbox"/> Minor Services (\$1 to \$5,000)	Procurement Method - Select One: <input type="checkbox"/> Department Head Authorized <input type="checkbox"/> 3 Vendor Price Quotes/Bids, if applicable <input type="checkbox"/> Continuation of Agreement (complete below): <input type="checkbox"/> Copy of agreement & Insurance attach'd Term Dates: _____ to _____ Insurance Active: _____ to _____	Required for NEW Agreements - Select All <input type="checkbox"/> Short-Form Service Agreement or Professional/Maint Service Agreement attached <input type="checkbox"/> 3 Vendor Price Quotes/Bids attached, if applicable <input type="checkbox"/> Insurance Certificate(s) & Endorsement(s) attached <input type="checkbox"/> W-9 or City 1099 Information Request Form attached
	The Finance Department reserves the right to request vendor price quotes/bids for purchases between \$1 to \$5,000.	

<input type="checkbox"/> Intermediate Services (\$5,001 to \$25,000)	Procurement Method - Select One: <input type="checkbox"/> 3 Vendor Price Quotes/Bids <input type="checkbox"/> Continuation of Agreement (complete below): <input type="checkbox"/> Copy of agreement & Insurance attach'd Term Dates: _____ to _____ Insurance Active: _____ to _____ <input type="checkbox"/> Written Justification for exceptions	Required for NEW Agreements - Select All <input type="checkbox"/> Short-Form Service Agreement or Professional/Maint Service Agreement attached <input type="checkbox"/> 3 Vendor Price Quotes/Bids attached <input type="checkbox"/> Insurance Certificate(s) & Endorsement(s) attached <input type="checkbox"/> W-9 or City 1099 Information Request Form attached
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<input checked="" type="checkbox"/> Major Services (\$25,001 or more)	Procurement Method - Select One: <input type="checkbox"/> Formal Bidding <input type="checkbox"/> Negotiation <input type="checkbox"/> Continuation of Agreement <input type="checkbox"/> Copy of agreement & Insurance attach'd Term Dates: _____ to _____ Insurance Active: _____ to _____ <input type="checkbox"/> Written Justification for exceptions	Required - Select All <input type="checkbox"/> Council Approval Date & Item # _____ <input type="checkbox"/> Copy of Agenda item attached <input type="checkbox"/> Copy of Staff Report attached Required for NEW Agreements - Select All <input type="checkbox"/> Professional/Maint Service Agreement attached <input type="checkbox"/> Insurance Certificate(s) & Endorsement(s) attached <input type="checkbox"/> W-9 or City 1099 Information Request Form attached
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INSURANCE APPROVAL: _____

Risk Manager

DATE: _____

REQUIRED	REQUIRED	REQUIRED FOR OVER \$25,000
 Department Head or Designee	Attachment #2 Finance Director or Designee	120 City Manager or Designee
Date	Date	Date



2/18/2016

File #: 1352-16 Item #: B.

Indian Wells City Council
City Clerk's Office

February 18, 2016

CVAG's Traffic Signal Synchronization Project

RECOMMENDED ACTION:

Council discusses and provides **DIRECTION** to the Coachella Valley Association of Governments (CVAG) Executive Committee representative in relation to CVAG's traffic signal synchronization project.

DISCUSSION:

Council Member Peabody has requested the City Council discuss and provide direction in relation to CVAG's traffic signal synchronization project. Attached is CVAG's February 8, 2016 staff report to the Technical Advisory Committee (TAC).

ATTACHMENT:

1. CVAG's February 8, 2016 staff report

ITEM 7B

Coachella Valley Association of Governments
Technical Advisory Committee
February 8, 2016



Staff Report

Subject: Traffic Signal Synchronization Project – CVAG Local Share Matching Funds and Systems Engineer Design Contract

Contact: Dennis Woods, Director of Transportation (dwoods@cvag.org)

Recommendation: Award a contract to Advantec Consulting Engineers, in the amount of \$2,482,008, plus a 10% contingency, for a total of \$ 2,730,209 for Phase 1 systems engineering design of the CVAG Regional Traffic Signal Synchronization project, Federal-aid Project Number CML-6164(021), and authorize the CVAG Executive Director to execute the contract.

Transportation Technical Advisory Sub-Committee: CONCURRED (Meeting of January 25th)

Transportation Committee: CONCURRED Unanimously (Meeting of February 1st)

Background:

The following represents the funding sources and for Phase 1 of the Regional Traffic Signalization Project:

Contract amount	\$ 2,482,008
Contingency	\$ 248,201
Total	\$ 2,730,209
Less Federal CMAQ Funds	\$ 2,417,054
Local (CVAG) Match 11.47%	\$ 313,155

Call for Projects

In October, 2013, the Executive Committee began the process to identify potential projects to utilize CMAQ funds apportioned to the Salton Sea Air Basin under MAP-21. In the Spring of 2014, CVAG member agencies submitted candidate projects.

Using the criteria of air quality; congestion mitigation; safety; project readiness; and cost benefit; as well as Regional Transportation Plan and Sustainable Communities Strategies (RTP/SCS), a review panel approved by the Executive Committee (consisting of representatives of various valley cities, the Riverside County Transportation Commission, and the South Coast Air Quality Management District) reviewed the project submittals and assigned points for each criterion.

To assist the review panel with scoring and ranking; CVAG also contracted with three consultants who, independently of the panel, provided a score for each project and rendered their professional opinion as to “recommend” or “not recommend” each project.

On June 9, 2014 the review panel and consultants assembled with CVAG staff and reviewed, discussed, and scored the 25 submitted projects.

Regional Signal Synchronization Selected

The strongest recommendation from the review team and the consultants was related to traffic signal synchronization. Multiple (7) proposals were submitted that were directly related to signal synchronization, totaling approximately \$7.2 million. The consultants ranked these projects high, as they have the potential to significantly improve air quality for a relatively low cost. The panel and consultants all expressed the opinion that synchronization must be done regionally, not city by city, nor even one major roadway corridor at a time. The panel felt that each of the synchronization projects should be combined, and probably expanded, to address synchronization regionally.

As a result, the panel recommended that the CMAQ funding that would otherwise have been awarded to 7 different proposals, totaling \$7.2M, be reserved for a truly regional synchronization system. This regional approach was endorsed by the Transportation Committee at its July 7, 2014 meeting and the Executive Committee at its July 28, 2014 meeting.

The commitment to a regional signal synchronization program had previously been reinforced by the CVAG Executive Committee at its February 24, 2014 meeting, when it authorized staff to submit a proposal utilizing Mobile Source Air Pollution Reduction Review Committee (MSRC) Traffic Signal Coordination / California Transportation Commission Partnership Program funds in the amount of \$ 310,375 for multijurisdictional / regional traffic signal coordination. This funding will be used towards the local match for the CMAQ-funded regional signal synchronization project.

Project Programming and Federal-aid/CALTRANS Process Initiation

On November 30, 2015, CVAG submitted a Request for Authorization (RFA) to proceed with Phase One (preliminary engineering) design work to the CALTRANS Local Assistance Office. The CALTRANS District 8 Local Assistance Engineer approved the RFA package on January 15, 2016, and forwarded it to Headquarters, where it is awaiting final approval.

The two-phase regional signal synchronization project is being incorporated into the Regional Transportation Plan (RTP) and subsequently into the Federal Transportation Improvement Program (FTIP), with a funding level of \$ 7,750,000 CMAQ funds, and an approximate \$3,078,000 local agency match. The total cost of Phase 2 implementation will not be known until after design and procurement.

Phase 2 (systems integration), requiring separate CALTRANS approvals and a separate procurement process, will begin once Phase 1 work has progressed adequately to define the detailed scope of Phase 2 services required.

Consultant Selection

On March 6 and 13, 2015, a Request for Proposals was advertised in the Desert Sun, inviting proposals from qualified consulting firms for the first phase (Systems Engineering) of the CVAG region-wide traffic signal synchronization project. This is basically the design phase of the system, although systems engineer duties under the contract also include operation of the system for 3 months (with option to extend) in order to achieve optimization of the system, following completion of Phase 2 (Systems Integration) by another firm.

Four responsive submittals were received by the published deadline of April 10, 2015. On April 14, these four proposals were sent to CVAG jurisdictions for review and rating. Rating criteria, weighting of criteria, and conflict of interest declaration forms were also provided, in accordance with CALTRANS consultant selection procedures. Upon return of consultant submittal rating sheets, two firms, Kimley-Horn and Advantec were selected for the short-list. Following additional review of these two firms' submittals by representatives of CVAG member agencies, Advantec was selected as the preferred System Engineering consultant.

Contract Negotiation

In late August / early September of 2015, contract negotiations were initiated with Advantec, and were brought to successful conclusion in the Fall.

The agreed-upon contract amount is \$ 2,482,008.00. Adding a contingency of 10%, gives a total of \$2,730,209

Scope of Work

A copy of the detailed Scope of Work that is to be included in the Systems Engineer contract is attached to this report as Exhibit 1.

Future Project Phase

Systems Integration (Phase 2 – System Implementation)

Once the Systems Engineer is on board, and system design has progressed to an appropriate stage, the Systems Engineer will assist in the preparation of the Technical Request for Proposals (RFP) for the **Systems Integrator contract** (this, in effect, is the actual implementation phase of the Systems Engineer's design).

Development of this RFP will include independent cost analysis and recommendations for a contract-specific Disadvantaged Business Enterprise (DBE) goal, which will be submitted to CALTRANS for approval. Following that approval, the issuance of the Systems Integrator RFP can take place. Review of submittals, consultant selection, contract negotiation, approvals, and execution of the Systems Integrator contract would follow a similar process to that of the Systems Engineer contract.

System Operation and Optimization

Following completion of Systems Integration, the Systems Engineer will optimize the synchronized signal system, operate it for 3 months, provide training manuals and CDs, and assist with all project closeout activities with CALTRANS and FHWA. (part of Advantec's scope of work under this contract). In addition, in anticipation of the possibility of potential future extension of Advantec's system operation and maintenance services, the Systems Engineer will also provide CVAG with a proposal to stay on to operate and maintain the system on a fiscal year contract basis, with options for renewal for up to 3 fiscal years.

Fiscal Analysis:

By pursuing this project as a regional synchronization project, the local matching share to the Federal CMAQ amount will be totally funded by CVAG, with none of the local match paid directly by the member jurisdictions. By comparison, had the individual cities pursued their own individual synchronization projects, each jurisdiction would have been responsible for all or part of the local match to the Federal CMAQ funding.

SCOPE OF WORK FOR THE CVAG REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROJECT

CVAG TRAFFIC SIGNAL INTERCONNECT (TSI) MASTER PLAN

CVAG's Traffic Signal Interconnect Master Plan (TSI) will include different sections as described in the following tasks.

Task 1 – Existing System Inventory and Evaluation

Existing System Inventory - The ADVANTEC Team will obtain all existing reference documentation from the agencies in the Coachella Valley, including improvement plans (street, traffic signals, signal communication, timing plans, signing/stripping, etc.), aerial photographs, right-of-way information and other applicable data. The inventory will also include traffic signals/CCTV systems/CMS systems projects currently underway or planned projects by each agency. For the purpose of the development of the TSI Master Plan and final design plans, the field review for each intersection will document location of existing traffic signal controller/cabinet, type of signal controller, signal communication equipment, detection equipment, and signal operation and phasing characteristics. In addition, Inventory of the ITS field elements communication system will also be conducted including type of communication, size, and location. In addition, a thorough investigation and evaluation of the communication hardware/software at the communication hubs, TMCs, and other facilities including the Police/Fire Department where future connections may be anticipated. Field notes and a photo log of the intersections, project corridors, ITS field elements, communication hubs, TSCC and other proposed communication facility will be maintained.

Existing System Evaluation - The ADVANTEC Team will evaluate the ITS elements based on current and future technology applications and will provide comparisons including engineering practices, staffing levels, infrastructure, etc. to similar local, regional and national demographics. The ITS improvements that will be recommended in the TSI Master Plan will be implemented in phases as funds become available.

Technical Memorandum - A Technical Memorandum Report will be provided to CVAG. The report will summarize existing system inventory and evaluation, findings and deficiencies at the signalized intersections, other field elements locations, and communication systems. Graphics, photos, and field notes will be included.

Deliverables: Existing System Inventory, Existing System Evaluation, Technical Memorandum

Task 2 – Evaluation of Surrounding Systems

Inter-Agency Communication Assessment – The ADVANTEC Team will identify communication needs for inter-agency coordination with cities, Riverside County, and Caltrans District 8. The ADVANTEC Team will identify the framework for future inter-agency coordination in order to provide a common structure for the design and deployment of future ITS systems. Future inter-agency ITS projects may include corridor signal coordination, traveler information system, arterial and freeway management systems, and transit systems including Bus Rapid Transit (BRT).

Technical Memorandum – An Inter-Agency Technical Memorandum will be provided to CVAG summarizing the elements under this task.

Deliverables: Inter-Agency Communication Assessment, Technical Memorandum

Task 3 – Assessment of Intelligent Transportation System (ITS) Opportunities

ITS Steering Committee Needs and Opportunities – The ADVANTEC Team will establish and coordinate an internal ITS Steering Committee with the stakeholders. It is anticipated that bi-weekly meetings will be held to establish a complete

understanding of ITS applications among the stakeholders. It is anticipated that, at a minimum, the following items will be discussed.

- Establish vision, goals, and objectives of the ITS Master Plan
- Identify current and foreseeable problems that can be addressed through ITS
- Provide dialogue regarding transportation and development institutional restrictions and obligations
- Recommend strategies through ITS solutions
- Provide benefit/cost ratios, impacts on current and future staffing, construction precedence, and other relevant issues
- Discuss operations and maintenance of ITS elements

Assessment of Current ITS Needs and Opportunities - This section will address current and future ITS needs using proven and available technologies. This section will discuss the CVAG's ITS needs including the integration of new and existing ITS components. Fiber-optic and wireless communication systems, including Wi-Fi and Wi-Max, DSRC, or 802.16 technologies will be addressed and the communication network topologies will be described in detail. It will also include the recommended communication network topology/topologies for each agency. Specific information and assessment of new ITS equipment will be provided in this section. Component specifications, functionality, and requirements of each system will be provided. Technology assessment of future ITS field elements will be provided.

Development of ITS Opportunities and Solutions – The ADVANTEC Team will develop ITS opportunities and solutions and at minimum will include the following:

- Document issues that need to be addressed with current system
- Define and prioritize future ITS requirements to address stakeholders needs
- Develop specifications for the signal system equipment and communication infrastructure, if it is recommended that the upgrade/replacement of the existing equipment is necessary
- Provide alternatives and recommended solutions to the stakeholders
- Provide combined solutions to stakeholder problems
- List of short term, medium term, and long term solutions
- Determine cost-effectiveness of project construction and maintenance

Technical Memorandum – An ITS Opportunities and Solutions Technical Memorandum Report will be provided to CVAG summarizing the elements under this task.

Deliverables: ITS Steering Committee Needs and Opportunities, Assessment of Current ITS Needs and Opportunities, Development of ITS Opportunities and Solutions, and Technical Memorandum

Task 4 – System Engineering Management Plan (SEMP)

SEMP Development – The SEMP focuses on the technical plan of the project and the systems engineering processes to be used for the project. Its purpose is to detail out those engineering tasks; especially to provide detailed information on the processes to be used. The ADVANTEC Team will develop a System Engineering Management Plan (SEMP) that will serve as guidelines for the development, design, and deployment of the CVAG's ATMS including the methodology for the implementation of the agencies traffic signal system and communication to the proposed centralized TMC and alternate TMCs. The SEMP will include system engineering requirements and analysis, system alternatives analysis, regional ITS Architecture implementation, transitioning of critical technologies, system integration, recommended technologies, and system engineering responsibilities. The SEMP will establish a high level description of the systems engineering effort needed for development. The SEMP will identify what items are to be developed, delivered, integrated, installed, verified, and supported. It will identify

when these tasks will be implemented, agency responsibility, and how the products will be accepted and managed. Finally, it will define the technical processes to be used to produce each of the project's products. The SEMP will be developed based on the National ITS architecture and requirements.

Technical Memorandum - A SEMP Technical Memorandum Report will be provided to CVAG summarizing the elements under this task.

Deliverables: SEMP Development, and Technical Memorandum

Task 5 – Concept of Operations (ConOps) and Strategic Deployment Plan

Detailed Recommended Technologies – The ADVANTEC Team will provide an overall ConOps for the recommended signal communications, ITS technologies, and TMCs. The ConOps will provide justification for and nature of changes, concepts of the proposed systems, high level project architecture, users' needs, operational policies and constraints, operational scenarios, operations and organizational summary of impacts, summary of benefits and enhancements, and disadvantages and limitations. The ConOps will provide detailed communication requirements for the field devices, hub locations and TMCs. It will identify the recommended technologies at each intersection, hub(s) and TSCC based on recommendations developed. If a specific communication system is recommended, it will identify the routing and corridors, device site location, hub locations and the selected transmission technology to be deployed. Recommendations for deployments of adaptive control system, travel times and volume, occupancy, and speed monitoring systems, CCTV systems, DMS systems, and other ITS field elements will be included. It will also include a design guideline for communication deployment. A communication corridor system architecture exhibit that will show existing communication systems, proposed and future communications systems will be included. The exhibit will show locations of existing and proposed controller cabinets, hubs, CCTV systems, CMS systems, conduit/communication alignments, video detection systems, advanced traveler information system (ATIS), and other future ITS elements.

Recommended Project Priority and Deployment – The ADVANTEC Team will provide a specific strategy to implement the ITS elements. This section will present the framework for the deployment of the CVAG's ATMS. Project priorities will be discussed and recommendation will be provided under this section. Priorities will be provided based on preliminary cost estimates, agency needs, local and regional benefits, and associate maintenance levels. Priority ratings (high, medium, low) will be based on the stakeholders feedback on needs and benefits gained. Maps and exhibits will be provided. A critical path diagram will be provided to show the dependencies of each project, sequence of deployment and tasks that can be performed simultaneously. Each phase of work shall be linked to available funding sources and qualification requirements stated. Any future issues or timing constraints that would impact the funding strategy must also be identified. The ADVANTEC Team, with the collaboration of CVAG, will identify strategic locations for all current and future ITS hardware and will include an ITS Design Section that will serve the subsequent PS&E task as well as all future ITS deployment projects.

Recommended Priority Corridors – The ADVANTEC Team will discuss the priority corridors throughout the valley. ITS solutions will be proposed for the City's corridors determined by the agencies. A project implementation list will be developed by the stakeholders. Based on cost, agency needs, local and regional benefits, time to implement, and associated operations and benefits levels, a priority and implementation plan will be developed. This project priority list will provide CVAG with a road map for ITS project deployment. A cost breakdown by implementation phase will be provided. If required, a project implementation schedule will be provided.

Recommended Short and Long Term Phasing for Each Project – The ADVANTEC Team will provide specific information and evaluate short and long term phasing for each recommended project.

Outline of Potential Environmental Documentation Requirements – The ADVANTEC Team will identify federal, state, and local environmental requirements for implementation of ITS Projects.

Projected Life Cycle Issues and Costs – The ADVANTEC Team will identify projected life cycles of the proposed ITS elements including equipment warranty, maintenance issues and costs.

Technical Memorandum – Strategic Deployment Technical Memorandum Report will be provided to CVAG. The report will summarize the areas described above.

Deliverables: ConOps and Strategy Deployment Plan, and Technical Memorandum

Task 6 – Inter-Agency Communication Needs

Inter-Agency Communication Assessment – The ADVANTEC Team will identify communication needs for inter-agency coordination with adjacent cities, Riverside County, and Caltrans District 8. The ADVANTEC Team will identify the framework for inter-agency coordination in order to provide a common structure for the design and deployment of signal communications, TMC deployments, and ITS field elements. Inter-agency assessment will include corridor signal coordination, traveler information system, and arterial and freeway management systems. Future needs may include transit systems including Bus Rapid Transit (BRT).

Technical Memorandum – An Inter-Agency Technical Memorandum will be provided to CVAG.

Deliverables: Inter-Agency Communication Assessment and Technical Memorandum

Task 7 – Funding Strategies Plan

Funding Strategies Assessment – The ADVANTEC Team will identify local, regional and federal ITS funding sources that CVAG or the agencies will be able to pursue for implementation of future phases that will be recommended in the TSI Master Plan. The development of a CVAG's TSI Master Plan is a key requirement for many funding sources that are related to ITS deployments. The ADVANTEC Team will provide the description of the funding source available including sources of information including grant applications, contact person information, references to other agencies that have obtained similar funding, etc. The ADVANTEC Team will discuss other funding opportunities under SB375, the planned green-house emissions cap and trade program. The ADVANTEC Team will provide a detailed list of operations and maintenance that will be required with construction of each of the listed priorities.

Technical Memorandum – A Funding Strategies Technical Memorandum will be provided CVAG.

Deliverables: Funding Strategies Assessment and Technical Memorandum

Task 8 – Systems Requirements Plan

Systems Requirements – Based on the Tasks identified above, the ADVANTEC Team will develop a System Requirements Plan to facilitate the migration of the recommended improvements that will be identified. Under this Task, the ADVANTEC Team will prepare the System Engineering Review Form (SERF) as part of the federal requirements for ITS projects. The ADVANTEC Team will assist CVAG with obtaining approval from Caltrans and FHWA.

Stakeholders Meetings - Project consensus by the various stakeholders will be necessary. It will require meetings with CVAG and participating agencies. The ADVANTEC Team will attend meetings with CVAG, Caltrans, participating agencies and others as directed by CVAG to discuss project goals and objectives, TSI Master Plan including ConOps, project architecture, ITS technologies, progress schedule, and provide technical clarification. It is anticipated that the following

agencies will be participating on this project including CVAG, (11) cities, County of Riverside, and Caltrans District 8. Therefore, it is critical that meetings are held monthly as a group, and separate meetings with each stakeholder to discuss in more detail their needs, requirements, and potential impacts. The number of meeting that will be required for the entire program will be provided as a separate task.

Technical Memorandum – A Systems Requirements Memorandum will be provided to CVAG.

Deliverables: Systems Requirements, SERF, Stakeholder Meetings, and Technical Memorandum

PROJECT ENVIRONMENTAL PHASE

Task 9 - CEQA Clearance

It is ADVANTEC's understanding that the proposed signal synchronization improvements would require minor ancillary improvements to existing signals at a number of locations throughout the Coachella Valley. The majority of improvements are assumed to be limited to previously developed areas within the agencies right-of-way. As such, it is anticipated that the project will be categorically exempt from CEQA under CEQA Guidelines Section 15301, Existing Facilities. In accordance with CVAG procedures, the ADVANTEC Team will prepare a Notice of Exemption (NOE). The NOE will consist of the State Clearinghouse's standard recommended NOE form, a brief project description and narrative describing the proposed improvements, and a graphic denoting the location of signal facilities. The NOE will be posted at the County Clerk and State Clearinghouse. This scope of work assumes that CVAG will be responsible for any Clerk filing fees associated with the project (if applicable). It is also assumed that all improvements related to the proposed project will be cleared under a single NOE prepared by us. Given the undefined nature of the project description at this time, this task assumes a maximum of twenty (20) intersections and/or corridors would be included in the project. All locations would be addressed qualitatively; in addition, it is assumed that improvements at each of these 20 locations would be similar in nature, and that a detailed intersection-by-intersection (or corridor-by-corridor) analysis would not be required.

Task 10 - NEPA Clearance

It is ADVANTEC's understanding that CVAG proposes to utilize Federal funding for the proposed project, thus requiring compliance with NEPA and the Caltrans Local Assistance Procedures Manual (LAPM). This task assumes that the appropriate form of NEPA documentation will be a Categorical Exclusion (CatEx) and that the project will be processed through the Caltrans (District 8) Division of Local Assistance.

Preliminary Environmental Study Form – The ADVANTEC Team will prepare a Preliminary Environmental Study (PES) Form in accordance with the Caltrans LAPM environmental reporting criteria. The PES Form will provide a preliminary analysis of potential environmental impacts associated with the project and identify environmental issues that may require further detailed study. The PES Form will be submitted to CVAG for concurrence prior to submittal to Caltrans. Caltrans will be responsible for a determination of the appropriate scope of work for the project. A final determination regarding the range of technical studies and appropriate NEPA action will not be made until Caltrans approves the PES Form for the project. However, based on our experience on similar Caltrans Local Assistance projects and our knowledge of the project area, it is anticipated that a CatEx will apply to the project. Given the minimal nature of proposed improvements and the scope of the project, it is not expected that any technical studies will be required, and the preparation of technical studies is specifically excluded from this task.

Categorical Exclusion - On behalf of CVAG, the ADVANTEC Team will forward the PES Form and preliminary engineering documentation demonstrating that significant environmental effects will not result with project implementation. This submittal will consist of a draft CatEx with formal request to Caltrans for approval. It is assumed that all improvements related to the proposed project will be cleared under a single PES Form and CatEx.

Environmental Commitments Record - In compliance with the Caltrans Standard Environmental Reference (SER), the ADVANTEC Team will prepare an Environmental Commitments Record (ECR) to track and document the completion of environmental commitments through the project delivery process. The ECR will combine relevant environmental compliance information together in a single place, making it easier to track progress and easier for project team members to identify implementing actions. The ADVANTEC Team will consult with Caltrans staff to determine the preferred format and outline of the ECR. Given the undefined nature of the project description at this time, this task assumes a maximum of twenty (20) intersections and/or corridors would be included in the project. All locations would be addressed qualitatively; in addition, it is assumed that improvements at each of these 20 locations would be similar in nature, and that a detailed intersection-by-intersection (or corridor-by-corridor) analysis would not be required.

Deliverables: Draft and Final NOE Packets, Draft and Final PES Forms, Approved CatEx and ECR Packets

PRELIMINARY ENGINEERING PHASE

Task 11 – Detailed Project Architecture

The ADVANTEC Team will use the project architecture(s) developed under the TIS Master Plan Phase and develop a **detailed** Coachella Valley-wide Project Architecture highlighting the communication routes, communication topologies, hubs, TMC location(s), and required technology replacement/upgrade at each intersection and/or communication route. In addition, recommended and approved TMC locations and ITS field elements will be shown. The ADVANTEC Team will develop a migration plan for a Gigabit redundant ring backbone deployed throughout the valley. Through the use of these Gigabit rings, communication “hubs” would be needed as distribution points where the Gigabit network could be distributed to the intersections as 100 Mb Fast Ethernet segments. This type of design maximizes the use of existing fiber optic cable and provides significant bandwidth capability for every ITS field element like HD quality CCTV cameras, CMS, battery back-up systems, Bluetooth systems, etc. As a part of the Gigabit Network design, the ADVANTEC Team will provision an IP Schema and VLAN and network security design for all current and future ITS needs. This includes the expansion of HD CCTV systems as well as CMS systems, Bluetooth Battery Backup Systems and other future ITS systems. Through the design for future ITS expansion, every ITS location will have the capability to install these ITS devices. The ADVANTEC Team will also prepare up to three (3) conceptual layouts of the new TMCs. The conceptual layout will provide CVAG and city staff to review alternative room layout, video wall/monitor location, operator furniture, and other amenities, if required. In addition, the conceptual plans will show the location and equipment information of the TMC equipment control room. In addition, the ADVANTEC Team will provide CVAG with a system architecture plan highlighting how the ITS field equipment will be linked to the TMC’s equipment room, TMC room, other departments, and/or the public via the CVAG’s web page (if required). The ADVANTEC Team will meet with project stakeholders and discuss the project architecture, and to obtain agencies approval prior to final design. The approved detailed project architecture will be used as design guidelines and verification for the preparation of final design documents. In addition, the ADVANTEC Team objective is to ensure that the system engineering requirements goals are met.

Deliverables: Detailed Project Architecture and TMC Conceptual Layouts

Task 12 – Wireless Technology Assessment

The ADVANTEC Team will conduct wireless communication assessment to determine if the use of wireless communication is feasible at specific intersections and/or corridors. Under this task, the ADVANTEC Team will provide the following services.

Wireless Assessment Approach – The ADVANTEC Team will initially perform a paper based analysis using google earth and path-loss to determine distance between intersections and line of site availability. Path-loss utilizes the latest data from the United States Geological Survey, USGS, to determine at what height radios need to be deployed to have unobstructed Fresnel clear coverage to maintain maximum throughput over the desired distances. This is combined with google earth to understand how many traffic signals can be connected together using Point-to-MultiPoint (PtMP) which minimizes latency and maximizes throughput across a network. Point-to-Point is also an option if the distance between intersections exceeds a mile. Mesh is also available to connect intersections together but limits throughput and maximizes latency and cannot maintain 5-9's of reliability.

Availability of Wireless Frequencies - After The ADVANTEC Team completes the initial analysis, we will perform an actual on-site survey to validate radio heights, line of site and use test radios to validate frequency availability. Narrow beam antennas are one of the best ways to limit the effects of in band radio interference and are always utilized for traffic signal communication interconnect. The ADVANTEC Team will use these antennas in our site survey test. We plan to use a bucket truck to validate line of site and frequency availability at the height of deployment. In this process, we will use a RF receiver to validate performance availability. RF frequencies that will be validated will be 900MHz, 2.4GHz, 4.9GHz, 5.15-5.85GHz, 5.9GHz DSRC. After this is completed we will visually inspect the conduit to determine if there is enough room to pull an additional cat5e/6 cable. When performing our on-site surveys we will also determine the most suitable location per intersection to deploy the radio that 1) has the best line of site between intersections, and 2) is within 300 feet/100 meters of the traffic signal cabinet.

Dedicated Short Range Communications (DSRC) Opportunities - By the end of this year the Federal Government will submit a rule to make DSRC mandatory in vehicles starting in 2017. Vehicle-to-Intersection (V2I) radios will be required to communicate basic safety messages to new vehicles equipped with DSRC and to improve traffic safety by reducing intersection fatalities for both personal vehicles and municipal agency vehicles including Buses, Light rail, Fire, PD and EMS. New radios are being developed that combine PtMP backhaul, 2.4GHz for local Wi-Fi access and DSRC to reduce the deployment and maintenance cost for citywide deployments.

Technical Memorandum - Based on our initial analysis and on-site survey, the ADVANTEC Team will provide a technical report that will include recommendations, recommended wireless design, photos at height of radios, throughput expectations, frequency plan, budgetary estimates, radio kitting and configuration, training, documentation and installation. For budgeting estimates, the ADVANTEC Team is anticipating that this work will only be conducted at 100 signalized intersections.

Deliverables: Wireless Technology Assessment (100 intersections)

SYSTEMS INTEGRATOR PROCUREMENT AND DESIGN PHASE

Task 13 – Systems Integrator Request-For-Proposal (RFP) and Procurement

The ADVANTEC Team will assist CVAG with the preparation of the Systems Integrator RFP. Services that will be provided under this task includes, but not limited to: preparation of detailed scope of work, detailed system procurement, installation, testing and commissioning requirements, detailed administrative requirements based on funding program, DBE goals requirements, professional insurance and liability requirements, qualifications requirements, project schedule, and other elements that will be necessary in order to provide a complete project. The ADVANTEC Team will assist CVAG with the

procurement of the System Integrator including assistance in the evaluation criteria, reference check, interview questions, etc.

Deliverables: Systems Integrator RFP and Procurement

Task 14 – Traffic Signal Interconnect, TMC, and ITS Field Elements Plans and Details

The ADVANTEC Team will prepare traffic signal interconnect plans and details highlighting traffic signal interconnect/communication improvements at the field elements, project corridors, and each agency TMC. In addition, the plans will show location and requirements for any proposed ITS field elements and communication hubs. The ADVANTEC Team will also prepare preliminary TMC plans and details highlighting the TMC room, equipment room, and other facilities. In addition, details of the TMC equipment rack(s) showing Traffic Management System server, Video Management System server, Layer 3 switch(es), and other hardware components to link the ITS Field elements to the TMC and other agencies will be shown. The plans will be prepared in AutoCAD in accordance to the CVAG’s requirements. For budgeting purposes, it is anticipating that up to seventy (70) plan sheets will be prepared under this Task.

Deliverables: Traffic Signal Interconnect, TMC, and ITS Field Elements Plans and Details (70 Sheets)

Task 15 – Utility Research and Coordination

Utility notifications to the various utility owners within the sphere of the Project will be prepared. The ADVANTEC Team will request the location of the existing utility lines along the corridors, in order to provide proper vertical and horizontal clearance at locations where new cabinets, communication hubs, conduits, and/or splice vaults may be installed. The ADVANTEC Team will provide coordination interface to establish controls for utilities that would be included within the right-of-way limits, and identify existing underground and overhead utility lines that may interfere with the location of the proposed traffic signal communication, wireless communication, and CCTV equipment. The ADVANTEC Team will compile the information in a matrix format to include dates of notification, persons/utility notified and responses from utility. Two set of plans will be included with the utility notices. The utility notices will be sent via certified mail. Copies of this information will be updated periodically and provided to CVAG.

Deliverables: Utility Research and Coordination

Task 16 – Technical Specifications, and Hardware and Software Procurement List

Preliminary Technical Specifications will be prepared to indicate proposed hardware, software, cabling, equipment, installation, testing requirements, equipment warranty information, and other pertinent information to facilitate the construction of the proposed improvements. It will also provide system integration requirements during the construction phase. It will define the role of the System Integrator, ADVANTEC Team, CVAG and agencies staff, and hardware/software approved vendors during the construction activities. The ADVANTEC Team will prepare Technical Specifications for all the required equipment, delivering, installation, testing, and commissioning requirements, and any additional item that may be required for the project including hardware and software upgrades. The ADVANTEC Team will provide a Material and Equipment Procurement List to CVAG highlighting the hardware, software, cabling, and other equipment that will be procured by the System Integrator. The ADVANTEC Team will work with CVAG to include the specific Contractor license(s), and network/software certifications required for this project. Application and/or permits required by the participating agencies will be included in the Appendix.

Deliverables: Technical Specifications, and Hardware and Software Procurement List

Task 17 – Construction Quantities and Engineer’s Estimates

The ADVANTEC Team will prepare construction quantity take-offs and construction cost estimates in accordance with CVAG’s requirements for the proposed traffic signal interconnect/communication improvements at the field elements, project corridors,

and each agency TMC. The Construction Quantities and Engineer's Estimates will be prepared in accordance with CVAG requirements. The cost estimate will be based on cost data from similar current projects. The engineer's construction cost estimates will be prepared in MS Excel format for use by CVAG to advertise for bids.

Deliverables: Construction Quantities and Engineer's Estimates

Task 18 – Hardware and Software Procurement Support Services

It is ADVANTEC's recommendation that hardware and software materials and licenses procurement will commence following the approval of finalized design plans in order to procure the latest technology and software version. It will consist of equipment ordering, shipping, and receiving at the selected job site. Materials will be purchased direct from the manufacturer or through manufacturer-approved re-sellers. All equipment will be shipped directly to the jobsite where it will be received and inspected by the ADVANTEC Team personnel. If required, received equipment will be removed from its packaging and bench tested for proper operation. Equipment deliveries will be coordinated with the installation phase so that CVAG or the agencies will not be required to store large amounts of equipment at their facility. The specific materials and cost will be provided to CVAG for review and approval. The cost for hardware and software procurement is not included under this task.

Deliverables: Hardware and Software Support Services

IMPLEMENTATION AND CONSTRUCTION SUPPORT PHASE

Task 19 – Software Verification and Customization

The ADVANTEC Team will work with the project System Integrator Team and perform software verification and customization as required to meet the project and agencies requirements.

Deliverables: Software Verification and Customization

Task 20 – System Implementation and Construction Support

The ADVANTEC Team will provide construction plan interpretation and consultation during the bidding and construction phases of the Project. The ADVANTEC Team will assist CVAG in preparing bid addenda as required to provide clarification to the drawings. The ADVANTEC Team will attend the pre-construction meeting in order to provide construction plan interpretation. The ADVANTEC Team will provide response to System Integrator's requests for information (RFI) about the plans and specifications. Regularly scheduled construction observation or attendance at weekly meetings is specifically excluded from this task. Services under this task can be based on "as requested" time and materials basis.

Deliverables: System Implementation and Construction Support

Task 21 – Develop Graphic User Interface (GUI)

The ADVANTEC Team will work with CVAG and the agencies to develop a GUI for each signalized intersection included in the project. At this time, it is anticipating that the intersection graphics will be created for 400 signalized intersections.

Deliverables: Develop Graphic User Interface (400 signalized intersections)

Task 22 – Construction Management and Inspection Services

- The ADVANTEC Team will provide CVAG with Construction Management Services during the construction/system implementation phase of the project. At a minimum, the ADVANTEC Team will provide the following services under

this task: Provide oversight of the System Integrator Team during the system procurement, installation, testing, and commissioning of the project components

- Provide oversight of the component testing plan, procedures, and approvals/certifications (milestone submittal)
- Assist CVAG with the preparation of Certificates of Compliance for all system/material components associated with the project materials. Coordinate with System Integrator to ensure that their work meets the requirement of the Certificates of Compliance.
- Provide oversight of the System Integrator for all hardware elements associated with the project including ordering, delivering, storage, testing, and installation
- Assist CVAG with the preparation of Certificates of Compliance for all hardware components through Caltrans/FHWA (milestone submittal)
- Provide oversight of the deployment, testing, commissioning, functionality and verification of High Resolution Data Loggers and associated components. Assist CVAG in the installation of the software to ensure that the project meets the requirements of the automated performance metrics application. Coordinate with System Integrator, manufacturer, and software supplier (Purdue University) to create a smoothly operating system with flawless data flow and measurement. Provide written certification of the functionality and compliance of project specifications
- Provide oversight of the deployment, testing, commissioning, functionality, and verification of proposed Ethernet communication system and network. Provide written certification of the functionality and compliance of project specifications
- Provide oversight of the deployment, testing, commissioning, functionality and verification of the copper, fiber optic and wireless communication system, including radio/wireless network. Provide written certification of the functionality and compliance of project specifications
- Provide oversight of the deployment, testing, commissioning, functionality and verification of the GPS receivers and associated components. Provide written certification of the functionality and compliance of project specifications
- Provide oversight of the deployment, testing, commissioning, functionality and verification of the traffic signal controllers and associated components. Provide written certification of the functionality and compliance of project specifications
- Provide oversight of the deployment, testing, commissioning, functionality and verification of the CCTV Systems and associated components. Provide written certification of the functionality and compliance of project specifications
- Provide oversight of the deployment of proposed traffic signals to ensure that the new traffic signals are completely integrated into the proposed project. Coordination with agency's project manager, and their contractor will be provided

The ADVANTEC Team will assist CVAG in providing construction inspection support during the implementation/construction phase of this project. Services under this task can be provided on "as requested" time and materials basis.

Deliverables: Construction Management and Inspection Services

TRAFFIC SIGNAL SYNCHRONIZATION PHASE

Signal synchronization is vital to maximizing traffic flow. Each corridor is unique and shall be thoroughly analyzed and evaluated to optimize the operations of the signals. The ADVANTEC Team will develop and implement optimized signal timings in a professional manner that will ensure perceptible improvements to the public. The ADVANTEC Team has initially identified 21 corridors as candidates for signal synchronization. The **21 corridors contain 302 signalized intersections, representing 80 miles** of roadways. The ADVANTEC Team also identified 172 signalized locations in close proximity to special traffic generators such as City of Indio's Polo Fields, Indian Wells Tennis Garden, The Shops at Palm Desert, and Palm Canyon Drive/Indian Canyon Drive in Palm Springs, which can be impacted by special events. The ADVANTEC Team will conduct a thorough field review of the existing traffic signal equipment and traffic operations along each corridor as part of

the ITS Master Plan (Task 1), and prepare a Report summarizing the existing traffic conditions, existing intersection geometry and traffic signal control equipment of each intersection.

Task 23 – Traffic Signal Synchronization (TSS) Stakeholders’ Meetings

The ADVANTEC Team will conduct meetings with each agency involved in the project to discuss the scope of work, and schedule; gather available information; and discuss each agency's constraints, key issues and timing parameters preferences. We will also conduct monthly progress meetings with the Project Development Team (PDT), comprising of representatives from all agencies and CVAG, to update the progress and work accomplished. These meetings will also serve to provide feedback between the project development team and ADVANTEC regarding the conduct of tasks, alternatives, and potential resolution of key issues. The ADVANTEC Team anticipates to conduct a maximum of 25 meetings, between individual meeting with Cities and PDT meetings.

Deliverables: Traffic Signal Synchronization Stakeholders’ Meetings (25 meetings)

Task 24 – Signal Timing and Traffic Data Collection

The ADVANTEC Team will obtain the following information from each of the participating agencies:- Existing timing sheets, including coordination plans; As-built drawings; Aerial photos and maps; All planned or programmed roadway improvements; Signal timing and priority parameters, including pedestrian and bicycle timing, leading and lagging left-turn phasing, and conditional service, as well as the timing optimization software preference; Identification of critical intersections and intersections with heavy pedestrian crossings. For development of signal timing, the ADVANTEC Team will gather pertinent field data, such as: Roadway geometry and lane configurations; Existing signal phasing and timing at all signalized intersection; Distance between intersections; Speed limits; Major sources/destination of traffic. We will research special traffic generators such as schools, colleges and sport/entertainment events to identify affected intersections and corridors, and develop a schedule for collection of traffic counts that covers start and end times of these special events.

ADT Counts – The ADVANTEC Team anticipates using available 24-hour traffic count data supplied by CVAG and cities to estimate the best time periods for collecting Turning Movement Count data for each peak or special peak periods, or winter/summer peak periods. Saturday and Sunday ADT counts, if available, will be used to determine the need for weekend turning movement counts and timing plans.

Additional ADT Counts – If ADT cannot be provided for specific location/period, the ADVANTEC Team will develop a schedule to collect 24-hour traffic counts (Average Daily Traffic - ADT). Upon acceptance of the schedule, the ADVANTEC Team will obtain 7 days of 24-hour ADT traffic count data. We have estimated to collect ADT counts at up to 160 locations. As a cost-savings measure, we will work with CVAG and local agencies to minimize number of new ADT counts by using available ADT data collected during the last 12 months. Based on the ADT counts, the ADVANTEC Team will recommend the best time periods for collecting Turning Movement Count data for each peak or special peak periods. Saturday and Sunday ADT counts will be used to determine the need for weekend turning movement counts and timing plans.

Turning Movement Counts - Upon approval of the ADT count data, the ADVANTEC Team will obtain 2-hour intersection Turning Movement Counts for each traffic peak period (A.M., Mid-day, P.M., and an additional peak to be determined), including pedestrian and bicycles counts. At locations close to schools, we will conduct turning movement counts that include the school-begin and school-end time periods. These “peak-within-the-peak” school hours will be used to evaluate the need for special school timing plans. For weekend turning movement counts, we will collect 2-hour counts during Mid-day peak, for the heaviest traffic day, either Saturday or Sunday. We will also collect turn counts. The ADVANTEC Team has anticipated to collect Turning Movement Count data for 4 periods (8 hours) at up to 302 locations. Count data (in 15-minute intervals) will be provided in MS Excel format, and will be used as input to our SYNCHRO model and to perform a level of service (LOS) analysis and timing optimization for each of the signalized intersections.

Deliverables: Turning Movement Counts (4 Periods at 302 signalized intersections);
OPTIONAL SERVICES: ADT Counts (160 locations)

Task 25 – Preparation of Request-For-Proposal (RFP) for 'Before' and 'After' Floating Car Travel Surveys and Preparation of Before and After Studies

It is anticipated that CVAG will procure an outside contract to collect the Floating Car Travel Data for the before and after studies of the traffic flow characteristics. The ADVANTEC Team will assist in the preparation of the RFP and assist in procurement of the outside contract. 'Before' and 'After' field travel time study will use a "floating car" survey. The survey utilizes a software that uses a GPS receiver connected to a laptop computer to track the speed and distance of the surveying vehicle. Up to five (5) floating car runs in each direction along the entire corridor will be performed during the selected peak periods (AM, Midday, PM and weekend/special peak), on 'typical' weekdays, away from any holidays, long weekends or school holidays.

The ADVANTEC team will perform the analysis of the data. Results of the 'Before' survey will be used to evaluate travel time, delay, and number of stops (measures of effectiveness - MOE), and to identify optimization strategies for signal synchronization (e.g. entire corridor end-to-end vs. zone-by-zone optimization). The ADVANTEC Team will summarize in a report the traffic patterns of the corridor, and our proposed optimization strategy. The ADVANTEC Team will prepare a memorandum that documents the results of the "Before Study" and the MOEs. Tables and charts will be used to analyze and compare the MOEs of the 'before' and 'after' studies. Estimate of the 'benefits' of the signal synchronization will be conducted using total delay, travel time, fuel usage, pollutant emission, etc. These benefits will be quantified and, wherever possible, converted to monetary terms in order to arrive at an average annual monetary savings to the travelers of the corridor. These results will be summarized in a Technical Memorandum.

Deliverables: Preparation of Request-For-Proposal (RFP) for 'Before' and 'After' Floating Car Travel Surveys
Memorandum showing results of 'Before' study, and
Technical Memorandum comparing 'Before' and 'After' Studies results

Task 26 – Signal Timing Optimization & Implementation

Using SYNCHRO software, the necessary parameters will be input to develop a model of the entire network:

- Existing geometry of network, distance between intersections, number of lanes, turn prohibitions, turning movements at every intersection;
- Existing speed limits, or prevailing 85th percentile travel speeds;
- Existing phasing at each intersection, including any special treatment such as lead-lag phasing, existing phase splits, offsets, and cycle lengths.

The model will be calibrated based on travel time, delay studies, and field observations of queues. A micro-simulation model will be developed, and used to estimate the effects of planned and suggested improvements, and to fine tune timing plans before implementation. The ADVANTEC Team will optimize signal timings parameters, such as cycle lengths, splits, and offsets. Special attention will be given to intersections that operate at poor levels of service (LOS D or worse) to identify possible improvements. Special techniques may be adopted such as: Lead-lead versus lead-lag phasing; Half-cycle or other harmonic cycle lengths for lightly traveled intersections, or double cycle lengths for heavily traveled intersections; System breaks with different cycle lengths; and Pedestrian timing adjustment techniques. **It is anticipated that the ADVANTEC Team will develop Synchro models for three peak periods (A.M., Midday, and P.M.) for 302 intersections and an extra Synchro model for a special timing plan for up to 172 intersections.**

SYNCHRO models and Time-Space diagrams will be provided to the local jurisdictions and CVAG for review. Upon final approval, the ADVANTEC Team will prepare signal timing plans in each jurisdictions format. They will bear the stamp and signature of our Project Manager, a Registered Civil/Traffic Engineer. The ADVANTEC Team will implement the new signal timings, and thoroughly check the results of the timing plans in the field during implementation to ensure that the signals are operating properly, and as intended. Extensive monitoring and fine-tuning will immediately follow. Based on our experience on similar projects, a number of signal timing improvements could be made through careful field observations subsequent to the implementation of new signal timings. The hours spent in the field during implementation and fine-tuning is extremely important towards successfully implementing improved signal timings with perceptible differences. The ADVANTEC Team anticipates that a maximum of **21 corridors, covering 80 miles**, will be selected to be part of the synchronization study. The ADVANTEC Team will prepare a Technical Memorandum documenting the SYNCHRO model optimization results, time-space diagrams for all corridor segments, and recommendations towards improving signal phasing and operations.

Deliverables: Synchro files; Time-space Diagrams; Signal Timing Sheets; Technical Memorandum

Task 27 – Traffic Signal Synchronization Project Report

A “Traffic Signal Synchronization Study” Report will be prepared that summarize the methodology and results of the Coachella Valley-wide Traffic Signal Synchronization. The ‘Before’ and ‘After’ study results will be used to assess the quantifiable benefits of the signal coordination efforts. The final report will include the following:

- Project objectives, location, and scope
- Descriptions of any operational deficiencies noted during field review/inventory at each intersection
- Geometry and traffic signal operational equipment parameters of each intersection
- Methodology in the development of optimized signal timing plans
- Implementation schedule, work performed, and improvements accomplished
- Summary of “Before” and “After” Study that documents the travel time, delay, average speed, number of stops, fuel emission estimates, pollutant emission estimates, including Green House Gases (GHG); and a Benefit /Cost analysis

Deliverables: Traffic Signal Synchronization Project Report

OPERATIONS AND MAINTENANCE PHASE

Task 28 – System Operations and Maintenance Support Services

After the project has been accepted by CVAG, the ADVANTEC Team will provide CVAG systems operations services. If required, the ADVANTEC Team will provide temporary staff to operate the TMC for a 3-month period. At this time, ADVANTEC is anticipating two persons will be assigned to provide operations and maintenance support for about 30-hours per week. Services under this task will be based on “as requested” time and materials basis. The ADVANTEC Team will provide as needed on-site troubleshooting of traffic management system problems. The ADVANTEC Team will assist CVAG with hardware and software issues, traffic signal timing issues, communications/network issues, and pro-actively investigate and address system concerns/issues that may arise after the entire project has been accepted by CVAG. The ADVANTEC Team will assist CVAG with coordinating and training CVAG personnel to take over the operations and maintenance of the system. It is anticipated that the ADVANTEC Team will provide Operations and Maintenance Manuals, reports, and bi-weekly training. The ADVANTEC Team will assist CVAG in the preparation of a Request-For-Proposal (RFP) to procure an as-needed services contract for field maintenance. The ADVANTEC Team will provide CVAG with an Operations and Management Work Plan that will guide the user with system operations and management procedures including, but not limited to: performance measures reporting, technical elements reporting, trouble shooting reporting, frequency of reporting, and signal

synchronization reporting with highlights of the overall benefits of signal synchronization. Services under this task can be provided on “as requested” time and materials basis. It is anticipated that services under this task will be for a 3-month period.

Deliverables: System Operations and Maintenance Support Services (3-months; 2-persons 30hrs/week each person)

PROJECT CLOSEOUT PHASE

Task 29 – Project Closeout Support Services

The ADVANTEC Team will assist CVAG on activities related to project closeout. Services under this task include the following:

Environmental Documents – The ADVANTEC Team will assist CVAG with preparation of the Environmental Mitigation Commitment Document. It is anticipated that coordination and limited meetings with CVAG, Caltrans and FHWA will be required to obtain approval of the document.

Closeout Documents - The ADVANTEC Team will assist CVAG with the preparation of closeout documentation for FHWA approval. It is anticipated that coordination and limited meetings with CVAG, Caltrans and FHWA will be required to obtain approval of the document.

Executive Level Support Documents – The ADVANTEC Team will assist CVAG in the preparation of an executive level business case that can be used by local agencies. The documents may include brochures, handouts, website news, etc. The goal is to provide the overall story of this program, overall benefits of the program, and how this program fit with all other CVAG initiatives including mobility and environmental objectives.

As-Built Plans – The ADVANTEC Team will prepare as-built plans for the project based on “markups” provided by the System Integrator and our site visits. The as-built plans will be prepared based on CVAG and agencies requirements. As indicated in the RFP, this **task is excluded from the cost proposal at this time.**

Services under this task can be provided on “as requested” time and materials basis. Permit fees shall be handled as a pass-through cost associated with the System Integrator’s contract.

Deliverables: Project Closeout Support Services including Environmental Documents, Closeout Documents, and Executive Level Support Documents
OPTIONAL SERVICES: As-Built Plans

PROJECT ADMINISTRATION, PROJECT MANAGEMENT, PROJECT COORDINATION, STAKEHOLDERS’ MEETINGS AND OUTREACH

Task 30 – Caltrans Forms and Coordination

The ADVANTEC Team will incorporate final design in a ready-to-submit construction bid package for Caltrans review and approval. The package will include final plans, specifications, and engineer’s estimates in accordance to Caltrans requirements including completion of all required federal forms for submittal of authorization to proceed with construction. The ADVANTEC Team will facilitate the coordination with the DLAE (District Local Assistance Engineer) for continuity during the Preliminary Engineering, Construction, and Close Out phases of the project. We will work with CVAG staff so that the forms and responses reflect an approach approved ahead of time. Early and clear communication with the DLAE is critical in

developing a productive working relationship for the project duration. The ADVANTEC Team has extensive experience in completing and processing the numerous federal funding authorization forms, as well as incorporating all required special provisions in the project specifications to provide for the prevailing wage laws and DBE and UDBE goals. ADVANTEC has completed such tasks for several Cities and Agencies throughout Southern California. Support documentation such as cost estimates, vicinity maps, and utility certification form will be coordinated between the design team and the point of contact with Caltrans.

Deliverables: Caltrans Forms and Coordination

Task 31 – Development of Draft Memorandum OF Understanding (MOU)

The ADVANTEC Team will develop a Memorandum of Understanding (MOU) between CVAG and the participating agencies in order to demonstrate their commitment to improving transportation opportunities throughout Coachella Valley. The MOU will define the program objectives as well as the responsibilities and limitations of the agencies. Based on the number of participating agencies, it is anticipated that **eleven (11) MOUs** will be required for this project. The ADVANTEC Team will coordinate with CVAG and the participating agencies the preparation of the MOU that will specifically describe the following, but not limited to:

- Goals and objectives of the project
- CVAG oversight of the project
- CVAG role and responsibilities
- Agencies role and responsibilities
- CVAG and agencies agreement on project implementation
- CVAG funding agreement
- System administration, guidelines, and policies
- System viewing and control priorities
- Responsibility on the system operations & maintenance
- On-site support and training

The MOU will be presented to CVAG's Executive Committee for consideration for approval.

Deliverables: Draft Memorandum Of Understanding

Task 32 – Project Control Website, Public Suggestion Webpage, and Mobile Application Recommendation

The ADVANTEC Team will establish a project controls website using a secured Internet-based collaboration tool that allows team members to communicate easily and effectively manage project data on a real-time basis, regardless of their location. With complex and dynamic ITS projects, managing communications and the flow of information among team members is a significant issue. Implementing a secured, project website where people can collaborate and share information is a proven, efficient way to address this very important project issue. In addition, other reporting tools, including a SharePoint Site, can be provided to facilitate managing, sharing, and storing information between the ADVANTEC Team, CVAG, and stakeholders. The ADVANTEC Team will assist CVAG to create and manage a project suggestion comment page in CVAG's website for use by the community. The ADVANTEC Team will review and respond accordingly on behalf of CVAG and the agencies. The ADVANTEC Team will provide CVAG with recommendations related to a traveler's mobile application that can provide real time travel information, feedback from motorists, and educational information.

Deliverables: Project Control Website, Public Suggestion Webpage, and Mobile Application Recommendation

Task 33 – Project Management and Project Coordination

The ADVANTEC Team will provide Project Management activities through all the aspects of the project. The ADVANTEC Team will prepared a detailed Work Plan, Resource Plan, Project Schedule, and prepare progress reports. To provide quality assurance/quality control, and to ensure on-time delivery of the project deliverables, ADVANTEC's Project Manager will actively be involved at all levels of the planning process to direct the day-to-day project activities and to identify and resolve critical design issues early on. Project coordination between ADVANTEC's Project Manager and CVAG'S Project Manager will regular communication via email, telephone, and progress meetings. The ADVANTEC Team will coordinate the development of the TSI Master Plan with CVAG and all stakeholders. The ADVANTEC Team will coordinate the project with each agency to discuss critical components on the project including multi-jurisdiction signal synchronization, MOU, technical elements, operations and maintenance, etc.

Deliverables: Project Management and Project Coordination

Task 34 –Stakeholders’ Meetings and Presentations

The ADVANTEC Team will hold monthly meetings with CVAG Transportation Technical Advisory Sub-Committee (TTAS) in order to establish the project goals and objectives, and to achieve consensus on how the system will be operated including hours of operations, signal phase lengths, summer and winter timing plans, etc., and discuss project progress. The ADVANTEC Team will meet with Caltrans District 8 on bi-monthly, quarterly, or as needed. The ADVANTEC Team will attend meetings with CVAG, FHWA, and others as directed by CVAG to discuss specific information and requirements that will be included in the project. Meetings with the Stakeholders Committee are included under this Task. Meetings will also consist of any specific meeting called by CVAG, or other agencies, at which Consultant's attendance is requested. The ADVANTEC Team will prepare and distribute meeting agendas, meeting minutes and an action item matrix to the project team as appropriate. The ADVANTEC Team will conduct presentations to CVAG TTAS, Technical Advisory Committee, Transportation Committee, and Executive Committee using appropriate presentation tools. It is anticipated that the ADVANTEC Team will actively participate on different meetings during a **27-month period**. The entire ADVANTEC Project Team will attend two project kick-off meetings. One meeting at the start of the project. The second meeting at the kick-off of the project integration contract. The ADVANTEC Team anticipates to conduct a maximum of 15 meetings with the project stakeholders.

Deliverables: Stakeholders’ Meetings and Presentations (15 meetings)

Task 35 – Stakeholders’ Outreach

The ADVANTEC Team will develop outreach materials for CVAG's distribution to agencies and the community. Outreach materials are excellent tools to educate the community on the benefits of the program including benefits related to signal synchronization. The ADVANTEC Team can prepare outreach flyers to be distributed to residents and businesses throughout the valley. The outreach materials can be provided in both English and Spanish. The electronic files of the flyers can also be used on the CVAG's website and in City publications.

Deliverables: Stakeholders’ Outreach



City of Indian Wells

44-950 Eldorado Drive,
Indian Wells

2/18/2016

File #: 1355-16 Item #: A.

**Conference with Labor Negotiators Pursuant to Government Code 54957.6.
City Designated Representative: City Attorney. Unrepresented Employee:
City Manager.**

EDWARD TY PEABODY
76471 Pala Palms Drive
Indian Wells, CA 92210

Council 2-18-16
Comments Peabody

February 12, 2016

Jesse Marx
Desert Sun
Palm Springs, CA

Dear Jesse,

Let me express first how disappointed I am concerning your failure to call me back on three different occasions after leaving you a telephone message. I can only assume you are not willing to have a conversation with anyone who asks questions regarding the CV Link. Based on that, I am writing you concerning the CVAG Executive meeting held in December 2015. At that meeting, I asked the members of the Executive Committee to approve a motion (see attached) regarding asking each city to have a public vote on the proposed route through their city whether the public supports use of Measure A Fund for the CV Link and is each city willing to use any of their General Funds for the O+M expenses related to the CV Link.

If you listen to the tapes of that meeting, you would realize a lot of residents in the Valley want such a vote. Also, if you review the comments made by the public in the Desert Sun, you would realize majority of the public expressed a desire to have a vote.

We lost the vote, which only demonstrated that certain members of the Executive Committee could care less what the public has to say.

The reality is at this point CVAG has no interest or ability to answer pertinent questions related to O+M costs or the proposed routes through each city. Since August, I have asked Tom Kirk/CVAG to answer a series of questions related to O-M costs, use of Measure A Funds, and use of a portion of each city's General Fund to cover costs. As of today, none of those questions have been answered (see attached). To be fair to all residents, don't you think you as a journalist have an obligation to research and write about those questions/issues? I have also attached a letter Tom Kirk sent me on September 23, 2015. Do you see any answers in this letter from Tom regarding my questions?

I have also attached a document from CVAG dated April 6, 2015, as a reminder to you that certain information in writing from CVAG is now being denied by CVAG. Yet their denials fly in the face of CVAG's own correspondence.

More questions you might want to ask are.

- Have the residents of each city had an opportunity to see and comment on the proposed routes through their city?
- Can each city afford to take monies from their General Funds to support the O+M costs associated with the CV Link?
- Since each city is responsible to cover the cost of any access roads or paths connected to the CV Link, can any city afford to pay for such access roads?
- Finally, attached please find a Desert Sun article dated February 6, 2016. Don't you find it an oxymoron that our county leaders are complaining about the state taking \$84 million for road projects over the next five years (which they should complain) while at the same time the same county and city leaders are willing to take \$20 million from Measure A Funds (which are to be used for repair of defective and depilated roadways, bridges and intersections) to use for the CV Link?

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Peabody', written over a horizontal line.

Edward Ty Peabody

Edward Ty Peabody
76471 Pala Palms Dr.
Indian Wells, CA 92210

11/9/15

Executive Director
Coachella Valley Association of Governments
73710 Fred Waring Dr Ste 200 Palm Desert CA 92260

Dear Mr.Kirk:

The city of Indian Wells hereby requests that at the Executive Committee meeting of December 7, 2015, the following item be scheduled for Discussion and a Vote of the Executive Committee.

Motion By Indian Wells

“That the CVAG Executive Committee hereby requests that each of the nine Coachella Valley Association of Government cities conduct an advisory vote (within the next six months) of their voting public as to the following question: Does (name of city) support or oppose an expenditure of approximately \$100,000,000 (of monies raised by grants and Measure A funds) for the construction of a bicycle/Electric Vehicle/Walking/Jogging path extending for about 50-miles from Palm Springs to the City of Coachella, with the further understanding that the annual Operations and Maintenance expenses (projected to increase by 2% annually) of the project will be the shared responsibility of each of the nine cities, plus the county, for the anticipated 75-years of the CV Link?”

Arguments in Favor of Motion:

The City of Indian Wells, through its staff and council members have received an extremely high volume of requests from residents to allow the voters of the cities decide if they want the financial responsibilities of future operations and maintenance as well as the inconvenience and annoyance of having a 15' to 30' pathway traversing through their city.

The residents of the City of Indian Wells have repeatedly stated that they oppose the use of Measure A funds being used on any aspect of the CV Link, whether for construction, operations or maintenance. They believe that Measure A funds should never be used except to repair defective and debilitated roadway, bridges and intersection. They further believe that if the public learns that Measure A funds are given to CV Link, the likelihood of an extension of the Measure 1 ½ cent sales tax increase will not be extended in 2039, thus ending an essential funding source for our debilitated highways, streets, intersections and bridges.

Respectfully submitted,



TY PEABODY
76749 Pala Palms Drive
Indian Wells, CA 92210

September 25, 2015

Tom Kirk
CVAG
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Dear Tom,

I appreciate your letter of September 23, 2015. The City Council of Indian Wells is not interested in personal attacks and accusations between you and Mayor Hobart. Our interest regarding the CV Link is strictly based on what is good for the residents of Indian Wells. What is critically important for you is to provide accurate information that can be verified. What has been most disappointing to me is the failure of CVAG to address the issue on an upfront basis. I asked you a series of questions on Thursday, September 17, which you could not or would not answer. Attached, I have provided you a list of questions I had prepared, which need to be answered sooner than later. If you want support of Coachella residents, CVAG needs to be transparent and clearly express its intentions.

As you could tell by our discussions and decisions on September 17, we have specific concerns, including the route for Indian Wells, use of Measure A Funds and use of the Indian Wells General Funds. I believe you should have each city have the same discussions with their residents and City Council as Indian Wells did.

The documents you provided us with your letter (staff report April 6, 2015) only increases my concerns regarding what CVAG's intentions are related to costs associated with building the CV Link and the O+M costs. From that report it is obvious discussions have taken place regarding the following:

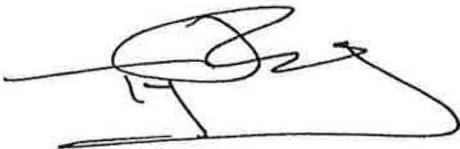
- Use of Measure A Funds (Reference A and B)
- Use of TOT tax
- O+M Operations and Maintenance Fund (Reference E)

As you are also aware, I have questioned CVAG's process of determining O+M's costs. There are so many holes in this budget document some of which I will list below:

- No budget numbers for emergency service and security

- Items not included in O+M budget:
 - o Procurement of insurance requirements
 - o Accounting management
 - o Marketing services
 - o Legal assistance
 - o Security costs
- Allocation for:
 - o Equipment maintenance – replacement, ordering, billing, paying for maintaining:
 - Shade structures (68)
 - Charging stations (28 standard, 18 solar, 24 WiFi and solar)
 - 8 rest areas
 - 30 trash compactors
 - 44 drinking fountains
 - 75 benches
 - 4 restrooms
 - Art, landscaping/painting
- Other needs apparently not budgeted for:
 - o Preparation of RFPs, preparation of contracts, legal review of contracts, CV Link websites, Facebook pages, trail maps, monitor contractors, organizing events, payment of vendors, issue required tax forms to vendors, make management level decisions that contractors cannot make, answer phone calls from trail users, media communication, manage the complete requirements of all the grants received, maintain official records, supervise audits, double checking CVAG claims for reimbursement.

It is time to work with all cities on all matters related to the CV Link. Questions need to be answered in a timely manner. In many instances the cart has been in front of the horse. It is time to have a better dialogue with all involved in the process including the residents.



Edward Ty Peabody

General Questions

- Since voters approved Measure A in 1988 and again in 2002, shouldn't voters have say on any changes to the original plan/documents?
- Would you consider the Link being restricted to bicycles and carts – if not, why?
- Presently, what is CVAG's plan to cover O&M costs yearly?
 - o Originally it was stated CV Link will “not require local funding – Master Draft Plan August 2014/Master Plan March 2015.
 - o Then proposed to take portion of any tot tax increases in each city after a period of time.
- What costs are you expecting cities to cover:
 - o Access roads/entrances to Link
 - o Capital expenses (needs, i.e., ambulances)
 - o O&M costs
 - o Security costs
- What effect on the Link will the Salton Sea have if problem isn't solved?
- What would be the consequence to the Link if carts were not allowed and CVAG went back to the original plan of bicycles and pedestrians?
- What is the estimated/projected use of the Link – by season/otherwise?
- What is the status of discussions with Golden Voice since letter of June 1st?
- What is arrangement with Cathedral City? Does this give them any relief on O&M costs?

Questions Concerning O&M Funding/Budgeting

- Original budget \$1.6M.
- Present budget just under \$1.0M.
- How did CVAG get to this new budget?
 - o Eliminated rangers to oversee 50 mile link.
 - o Going to have half administrative person to oversee entire project.
- CVAG recently stated:
 - o "O&M estimate/methodology reasonable."
 - o "Projected budget sound at \$1.0M."

Do you believe this is true?
- Items missing:
 - o Nothing budgeted for any additional cost for fire/police services for link- do you expect cities to pick up costs?
 - o Who pays for capital needs for cities to service their portion of links, i.e., ambulance?
- Items not included in O&M budget:
 - o Procurement for insurance requirements
 - o Accounting management
 - o Marketing services
 - o Legal assistance
 - o Security costs
- Equipment maintenance – replacement, ordering, billing, paying for maintaining:
 - o Shade structures 68
 - o Charging stations (28 standard, 18 solar, 24 WiFi and solar)
 - o 8 rest areas
 - o 30 trash compactors
 - o 44 drinking fountain
 - o 75 benches
 - o 4 restrooms
 - o Art, landscaping/painting
- Other needs:
 - o Preparation of RFPs, preparation of contracts, legal review of contracts, CV link websites, Facebook pages, trail maps, monitor contractor, organizing events, payment of vendors, issue required tax forms to vendors, make management level decisions that contractors cannot make, answer phone calls from trail users, media communication, manage the complete requirements of all the grants received, maintain official records, supervise audits, double checking CVAG claims for reimbursement.

- Interaction with cities regarding street difficulties, roadblocks.
 - Interaction with city police departments.
 - Interaction with city fire departments.
- Finally, when will EIR be completed for entire project – consultant state end of 2016, but starting project in 2017.
 - Fire/police cannot give cities budget until EIR completed the end of 2016.
 - Why would CVAG do an EIR on routes rejected by the cities of Indian Wells and Ranch Mirage?

Questions for Tom Kirk

Measure A Funds

- Would you agree that if Measure A funds cannot be used on the CV link, this would mean costs to individual cities would increase?
- How could a city council responsibly commit their city to support CV links O&M until they know for sure – what their upside risk might be?
- Should regional Measure A funds be taken from the Roadway Improvement TPPS list of needy Coachella Valley roads? (Statement): The voter's intent for Measure A funds has been for this money to be used to repair our roadways and Riverside County is the 14th worst county in the USA according to newspaper accounts.
- How can CVAG justify taking Regional Measure A funds to be applied to a brand new CV link project when never in the history of Measure A have those funds gone to anything other than fixing damaged roads, intersections and bridges that have been on the TPPS list of needy projects?
- The estimated cost for repairing all Valley roadway projects on the TPI S list exceeds \$3 Billion?
 - o Does CVAG really believe the CV link should be a higher priority than the 240 or so projects on the TPPS list, some of which have been there for years?
 - o Would CVAG like to put the matter to a public vote, which is being requested by many regional voters?
- How can CVAG justify a brand new project getting on the TPPS list ahead of 240 or so debilitated and dangerous roads that have been on the list for years without being attended to?
- For the past ten years there have been about 240 designated Coachella Valley roadways on the TPPS Priority List – all of which are in dire need of repair – and is CVAG trying to change the rules to allow CV link, a brand new project, to qualify for Measure A money over those broken roadways?
- Do you agree with Supervisor Biot and Mayor of Corona – “Roads in Riverside are some/the worst in the country. Our infrastructure is riddled with sagging bridges, crumbling asphalt and potholes. (Riverside Press Enterprise 8/26/15)” “We believe every dime we’re paying for transportation should go to transportation project. A constitutional guarantee that keeps transportation funds in transportation accounts has been well documented.”

Questions/Issues

- CUAE does not have law enforcement requirements/authority
- Cities have law enforcement responsibilities for CU link
- Presently weight limit on CU link 3,000 lbs.
 - o Fire engines weigh 40,000 – 70,000 lbs. depending on type of fire engine
 - o Paramedic vans weigh 20,000 – 25,000 lbs.
- There will be capital costs for emergency vehicles not on any plan – who pays
- EIR study has not been done
 - o Fire and police cannot give estimate of costs until EIR completed
 - o Who pays for public safety costs – capital/operating costs
 - o Points of access have not been determined
- Nothing has been discussed or budgeted regarding public safety costs:
 - o Lighting issues
 - o Security concerns
 - o Public call boxes
 - o Needs for access by emergency vehicles
 - o Needs for additional patrol hours
 - o Capital expense requirements for specialized equipment, i.e., paramedic vehicles
- What about bathroom needs – how many/where?
- Action plan for criminal activity?
- Combining all uses (see attached) – no plan for enforcement of laws, rules and policies

COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS

73-710 Fred Waring Dr., Suite 200, Palm Desert, CA 92260 · (760) 346-1127 · www.cvag.org



September 23, 2015

Mayor Ty Peabody

Mayor Pro Tem Dana Reed
Councilman Richard Balocco
Councilman Doug Hanson
Councilman Ted Mertens
City of Indian Wells
44-950 Eldorado Drive
Indian Wells, CA 92210

MAYOR TY PEABODY
Gentlemen,

I wanted to extend my appreciation for the chance to discuss CV Link and our continued efforts to provide alternative transportation options in the City of Indian Wells at your special study session on September 17. While CVAG is preparing environmental compliance documents, it is not looking for votes but instead looking to work with the cities and the public to provide information and address any concerns. CVAG will be following up with City staff to follow up from the direction you provided at the special meeting.

While I appreciated the opportunity to speak, the format did not allow me to address misstatements made by the mayor of Rancho Mirage. Mayor Hobart continues to reference the April 6, 2015 staff report that, ironically, was pulled from public discussion at a request he made with Rancho Mirage Mayor Pro Tem Ted Weill.

Mayor Hobart indicated that CVAG staff was "threatening the use of regional Measure A funds" for those who did not sign on to a proposed MOU for the operations and maintenance of CV Link. When Councilman Doug Hanson questioned Mayor Hobart, Mayor Hobart reiterated that the MOU I prepared as a draft was "threatening" the "regional" Measure A funds that CVAG receives to fund projects in the region's capital improvement program. This is blatantly inaccurate, and it is unfortunate that Mayor Hobart has chosen to take one sentence out of context. Such a strategy might be effective in a court room, but it doesn't support an honest discussion of public policy.

The sentence in question was in a staff report, not the proposed MOU. It was referring to the regional Measure A funds that were proposed to be used for the preventative maintenance costs of CV Link. (See, for documentation, the sentence annotated with "Reference A" in the attached staff report) Frankly, agencies rarely consider these long-term costs at this early stage of engineering and environmental work on an infrastructure project. The concept of using regional Measure A funds for preventative maintenance of CV Link was described again in the next paragraph. (see "Reference B" in the attachment)

0924 15 PM 0815 CITY OF IW

The intent of the staff report was to start a conversation about developing a voluntary regional system. Under the proposal, signatories would agree to regional maintenance and those who did would contribute some of the growth in transient occupancy tax, which would be paired with some regional Measure A funds for preventative maintenance. (see "Reference C" in the attachment) The sentence that Mayor Hobart quoted was the final one in this lengthy paragraph which clearly outlines the potential to use regional Measure A funding for replacement costs – not for any other project or any other use.

The proposed MOU itself specifically mentions the use of regional Measure A for funding preventative maintenance (see "Reference D" in the attachment) and goes on to make it clear that this funding would be pooled in a CV Link O&M Fund and used in jurisdictions that signed on to the MOU. (see "Reference E" in the attachment)

At no point in the MOU or the staff report does it state, imply, allow or even suggest that CVAG can or should hold back regional Measure A funds to fund the delivery of projects in the regional capital improvement program (called the TPPS) for any reason. I realize I'm repeating this point, but this is an important matter and I want to clear up the repeated misrepresentation of the April 6, 2015 staff report.

Funding and delivering regional transportation projects is part of CVAG's core mission and CVAG has made it a priority to ensure that Measure A and our other regional transportation dollars are distributed fairly. It is for this reason that I couldn't contain my disbelief in this allegation that CVAG would hold back funding for projects being made at your meeting on Thursday. My apologies for the reaction, however I take my charge seriously to advance projects in the TPPS.

Echoing some of his previous statements, Mayor Hobart on Thursday stated that the proposal was "intended to be approved at the end of the month of April" and that this "could have been signed by the representative from each city at the Executive Committee." This also is not true and, as most attorneys will tell you, it is not how an MOU between governments works. Until Rancho Mirage yanked the idea from public discussion, it was CVAG staff intent to have the proposal fully vetted through all our committees so Indian Wells and our other members could provide feedback. If it had been approved by our Executive Committee, the MOU – like other legal agreements – would have been sent back to the member jurisdictions so they could each vote on it and for it to pass would require a majority vote. This is our standard process, and it sometimes can take many months to complete.

Finally, Mayor Hobart stated that CV Link was going to the "top of the TPPS list" and that it would cost "\$600 million a year." I appreciate that Councilman Hanson corrected the Mayor publicly, as the proposed operations and maintenance budget is more like \$600,000 per year, with Measure A funding supporting preventative maintenance such as concrete replacement decades from now. And while CV Link is being added to the regional project list, our Executive Committee has ensured it won't be at the expense of other projects. As Mayor Hobart might remember when he voted for the idea in February 2012, the motion authorized "CVAG transportation funds to be used as a potential match as long as such funding does not delay construction of any currently obligated project or delay any other pending high priority project." That is the official CVAG policy.



We have also contacted Mayor Hobart, responding to the allegation made in front of you that there have been inappropriate remarks and personal attacks made on CV Link/CVAG social media. Those comments were not made on social media accounts that CVAG controls or that CVAG staff has any influence over, and we are closely monitoring the comments on our Facebook page to keep the CV Link conversation productive and meaningful.

At the meeting, CVAG staff provided each of you written documentation about the project. I'm always available to answer questions and address your concerns. Thank you for your continued collaboration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Tom Kirk', with a long horizontal stroke above the name.

Tom Kirk
Executive Director

CC: City Manager Wade McKinney



ITEM 7C

**Coachella Valley Association of Governments
Transportation Committee
April 6, 2015**



Staff Report

Subject: Establish and Fund CV Link Operations and Maintenance Fund

Contact: Tom Kirk, Executive Director (tkirk@cvag.org)

Recommendation: Approve an Agreement to Establish and Fund CV Link Operations and Maintenance Fund.

Background: CV Link is an approximately 50 mile long multi use path that connects 8 Coachella Valley cities. During the February CVAG Transportation Committee, Technical Advisory Committee and Executive Committee meetings, action was taken that would enable additional “spurs” that would increase access throughout the Coachella Valley to CV Link. To date, CVAG has assembled approximately \$75 million to fund design and construction of CV Link, including the largest award in the State of California of Active Transportation funds in September, 2014: \$10.9M. The project is believed to be the largest project of its kind in the nation.

While road and similar infrastructure projects generally have high capital costs and relatively low operations and maintenance (O&M) costs, there will be ongoing costs to keep CV Link as a high quality transportation, economic development, and public health piece of community infrastructure. Similar trails, e.g. Santa Ana River trail, often do not have a dedicated O&M funding source nor is there a regularly scheduled system to resurface and repair the trail. Maintenance is left to local governments to address on an as needed basis. That shouldn't happen with a project of CV Link's significance.

USE OF CVAG REGIONAL MEASURE A FUNDS FOR O&M OF CV LINK

While O&M costs may not be large in comparison to other governmental programs and services, on a 50+ mile facility, they do add up. The projected cost of operating and maintaining CV Link is approximately \$1.6M per year when the 50 mile facility is fully constructed (see the CV Link Master Plan, http://www.cvag.org/library/pdf_files/trans/CV%20Link%20Docs/CV_Link_Master_Vol_1.pdf, for details). A significant portion of the annual O&M expenses are related to preventative maintenance and typical road/bridge rehabilitation that would be undertaken on any major roadway. In fact, as can be seen in the table excerpted from the Master Plan, below, about \$600,000 of the \$1.6M O&M budget falls into this category. Consequently, such expenses are eligible for other sources of funding utilized by CVAG, including Measure A funding and AB 2766 funding.

CV LINK OPERATIONS AND MAINTENANCE BUDGET

ACTIVITY	ANNUAL COST	POTENTIALLY ELIGIBLE FOR MEASURE A OR AB 2766 FUNDING	OTHER SOURCE OF FUNDING
MAINTENANCE			
Sand and debris removal, sweeping	\$51,900	\$51,900	
Concrete repair	\$268,700	\$268,700	
Signs and pavement markings	\$56,400	\$56,400	
Fences, bollards and gates	\$21,000	\$21,000	
Clearing of drainage channels and culverts	\$15,000	\$15,000	
Bridge structures (cyclic and periodic)	\$55,500	\$55,500	
Restrooms	\$20,000	\$20,000	
Site furnishings	\$30,000	\$30,000	
NEV leases	\$36,000		\$36,000
Graffiti removal	\$30,000	\$30,000	
Lighting maintenance	\$30,000	\$30,000	
Landscaping	\$250,400		\$250,400
SUBTOTAL MAINTENANCE	\$864,900	\$578,500	\$286,400
OPERATIONS			
Utilities (electric and water)	\$28,900		\$28,900
Events, promotions and website maintenance	\$47,500		\$47,500
Management and administration, dispatch (2 FTE)	\$122,500	\$43,828	\$78,672
Rangers (10 FTE)	\$553,100		\$553,100
SUBTOTAL OPERATIONS	\$752,000	\$43,828	\$708,172
TOTAL MAINTENANCE AND OPERATIONS	\$1,616,900	\$622,328	\$994,572
TOTAL PER MILE	\$33,600	\$12,932	\$20,668

Reference A

Once approved by a majority of the local government signatories, a Measure A requirement, to the attached agreement, CVAG would be permitted to use its Measure A revenues for preventative maintenance of CV Link, a regional arterial. CVAG also runs a regional street sweeping program. To the degree street sweeping is necessary on CV Link, modifications can be made to the regional street sweeping program and the "AB2766" funding agreements that support the program. AB2766 is a fund derived from motor vehicle registration fees designed to improve air quality. Street sweeping is one of the more significant "control measures" to address particulate matter (PM10), or very fine dust, in the Coachella Valley. Additionally, AB 2766 can fund other programs that reduce emissions and that source of funding can be explored further for applicability to fund some of the elements of CV Link, such as charging stations or low emission neighborhood vehicles.

USE OF GROWTH IN TRANSIENT OCCUPANCY TAXES TO SUPPORT CV LINK O&M

Reference B

Therefore, with approval of the attached MOU by a majority of the Cities/County in the Coachella Valley, Regional Measure A funding, and to a small degree, AB2766 funding, could be used to support

between 30% and 40% of projected costs, close to \$1M in expected costs still need to be addressed. The CV Link Master Plan, (http://www.cvag.org/library/pdf_files/trans/CV%20Link%20Docs/CV_Link_Master_Vol_1.pdf), identifies a number of potential sources of O&M funding: from grants from state and federal government to sponsorships to vehicle registration fees or even existing transportation sales tax measures. There are benefits and challenges with each of these funding sources. Of course, grant funding sources can come and go and are generally not good sources for on-going expenses. Sponsorships are a possibility and the project may be very marketable once constructed. Still sponsorships may be best for funding specific events or special places or public art rather than paying for ongoing O&M. One funding source stands out for its relationship to perhaps the sector of the economy that could benefit most from the project: tourism.

Along with agriculture, tourism is one of the two biggest sectors of the Coachella Valley economy. In June, 2012 Dr. John Husing's economic analysis of CV Link, he projected a \$487M direct economic benefit, and a \$300M indirect benefit from tourism through 2035 from the project. (For reference, refer to: http://www.cvag.org/library/pdf_files/admin/Parkway1e11%20SummaryRevised.pdf)

Dr. Husing based his economic analysis on the average historical hotel occupancy rate of 57.1% in the Coachella Valley and the empirical data from other communities that have heavily invested in bicycling infrastructure and concluded the vacancy rate could bump up initially about 0.75% and increase to 1.50% within a few years. Given the size and scope of the tourist economy, even such a conservative estimate means many more tourism related dollars flow in and around our economy and, consequently, more Transient Occupancy Taxes (TOT) collected by local jurisdictions.

Attached to this staff report is a draft "Agreement to Establish and Fund CV Link Operations and Maintenance Fund". The concept, much like CV Link itself, is a novel one and as far as we can tell, has never been implemented before. The concept builds on the redevelopment concept: making public investment in good streets, flood control structures and the like in older, dilapidated downtowns and other urban areas drives up property values which, in turn drives up property tax receipts. Under redevelopment, a portion of those new property tax receipts were pledged to pay off the debt incurred with the initial investment in the streets, flood control structures, etc. While such a concept has never been utilized with Transient Occupancy Tax, there are few areas in the State of California where the tourist industry is such a dominant part of the economy and tax structure and there are few areas in the state that have had the political will to implement cutting edge programs like our TUMF transportation program and multiple species program. And here the logic is much the same as with redevelopment; build CV Link and tourists will come and will, hopefully, stay longer, hotel occupancy rates inch up and resultant tax revenues will also increase. One major difference is the TOT would not be used to pay off debt or the capital cost, which is being largely secured from sources outside the Coachella Valley; rather it would be used to pay for ongoing O&M costs.

HOW WOULD A TOT GROWTH INCREMENT PROGRAM WORK?

Reference C

So, how would this work? Under the proposed MOU, 2016 is the base year. Beginning in 2017, 8% of the increase in TOT would be directed to the CV Link O&M Fund. The MOU is written to encourage full participation valley wide. While some jurisdictions have a much greater share of rooms and TOT, e.g. Palm Springs with nearly 40% of TOT collected Valley wide and Palm Desert with nearly 20% of TOT collected, funding from those communities and from the CV Link O&M fund would only be used to maintain the sections of CV Link within jurisdictions that are parties to the MOU (see provision #7). Additionally, it is proposed that only signatories to the MOU would benefit from the use of Regional Measure A dollars. Of course, it is in everybody's interest to maintain CV Link at an extremely high level and consistently from end to end and less expensive to do so than resorting to each community maintaining sections on their own. How much could be generated?

In 2012/2013, approximately \$50 million was collected by Valley cities in TOT. If total TOT receipts increased about 5% per year then total receipts would increase by 25% over 5 years, or \$12.5M. And, if 8% of this new growth were directed to the fund, \$1M would be generated in year 5. Since the project will not be complete for a few years and the periodic concrete and structure maintenance will not be needed for years after construction, the approach would not need to generate the \$1.6M immediately.

To develop this concept, CVAG staff discussed alternative approaches with many city managers and tourism officials. Other concepts were considered, such as the use of the tourism Business Improvement District (BID), but there may be some legal and practical limitations for using BID revenues for this purpose. As the cities know, there are few "strings" associated with how TOT is used in a community. Generally, city managers reacted favorably to the concept, certainly more open to this than having each city maintain sections of CV Link, but a few noted one potential flaw. If a new hotel or resort were constructed in a community, would it be fair or appropriate for 8%, or any percentage, of the TOT from a new facility is directed to the CV Link O&M fund? It would seem not. So condition 3B was added to the MOU to address "New TOT hotels/resorts". For new hotels and resorts, not including new vacation rentals that might start up, the "base year" would start five years after the hotel was operational. From then on, the growth would be charted and 8% of the new growth in TOT would be subject to the same provisions as other facilities.

ANALYSIS

If we were to use the past 3 years of TOT growth rates as a guide, even a 8% share of growth would generate the needed funds within a couple of years and, assuming more modest growth rates of 5%, within 5 years.

Under the approach, it is likely that any one city's ultimate contributions will be approximately based on the size of its hospitality industry. Of course, it is still related to the growth in that industry too. Since Palm Springs has the largest hospitality industry, the analysis below uses that city as an example. If each city's O&M costs were based on the actual mileage of CV Link in their city, Palm Springs would pay for 33% of the CV Link O&M cost (15.8 of 48.1 miles).

For your information, CV Link Mileage per city is presented below:

CV Link Mileage		
City	Miles	
Cathedral City	3.0	6%
Coachella	5.5	11%
Indian Wells	3.6	7%
Indio	5.7	12%
La Quinta	2.6	5%
Palm Desert	5.3	11%
Palm Springs	15.8	33%
Rancho Mirage	4.7	10%
Unincorporated	2.0	4%
Grand Total	48.1	

Under the approach outlined above, where CVAG pays for PREVENTATIVE MAINTENANCE through Measure A (and, potentially, some AB2766) and the cities pay into the fund based on 8% of the incremental growth in TOT up to the budget cap (e.g. \$1M, adjusted for inflation over time), Palm Springs will likely be responsible for substantially less than 33% of the O&M costs under the assumptions included in the following spreadsheet. Under the 2016 as the base year scenario, Palm Springs ends up paying about 24% of the O&M. It would seem that it was likely that most cities contributions would be less than they would be if the costs were allocated simply city by city by the mileage of CV Link within that jurisdiction and the contributions would be generally related to an industry that stands to benefit from the construction and high quality operation of the project. See the attached spreadsheet¹.

¹ The assumptions used in the analysis: the operations and maintenance budgets increase by 2% every year for inflation, TOT increases by, on average, 5% in future years, and the CV O&M Fund receives 8% of the growth in TOT.

Greater Palm Springs CVB

TOT Taxes Collected By City January 1, 2017 - December 31, 2025

ASSUMPTIONS

Base Year: 2016
 % of Incremental Growth to CV Link Operational Fund: 8% (but never a negative #)
 Projected Growth in TOT: 5%
 Operations Budget: \$ 996,000 (fund caps at this amount, plus Inflation) by 2016
 Operations Budget Inflation: 2%

	ESTIMATED				ESTIMATED				ESTIMATED				
	CY 2016	CY 2017			CY 2018				CY 2019				
	Total TOT	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund
Cathedral City	1,338,427	1,405,348	66,921	5,354	5,354	1,475,615	137,188	10,975	10,975	1,549,396	210,969	16,878	16,878
Desert Hot Springs	1,474,305	1,548,020	73,715	5,897	5,897	1,625,421	151,116	12,089	12,089	1,706,692	232,387	18,591	18,591
Indian Wells	7,191,659	7,551,242	359,583	28,767	28,767	7,928,804	737,145	58,972	58,972	8,325,244	1,133,585	90,687	90,687
Indio	3,120,855	3,276,898	156,043	12,483	12,483	3,440,743	319,888	25,591	25,591	3,612,780	491,925	39,354	39,354
La Quinta	6,779,458	7,118,431	338,973	27,118	27,118	7,474,353	694,895	55,592	55,592	7,848,071	1,068,613	85,489	85,489
Palm Desert	10,949,715	11,497,201	547,486	43,799	43,799	12,072,061	1,122,346	89,788	89,788	12,675,664	1,725,949	138,076	138,076
Palm Springs	23,297,682	24,462,566	1,164,884	93,191	93,191	25,685,694	2,388,012	191,041	191,041	26,969,979	3,672,297	293,784	293,784
Rancho Mirage	5,710,544	5,996,071	285,527	22,842	22,842	6,295,875	585,331	46,826	46,826	6,610,669	900,125	72,010	72,010
Totals	\$59,862,645	\$62,855,777	\$2,993,132	\$239,451	\$239,451	\$65,998,566	\$6,135,921	\$490,874	\$490,874	\$69,298,495	\$9,435,850	\$754,868	\$754,868

Operation Budget: 996,000 1,015,920 1,036,238
 Operation AND Maintenance Budget: 622,328 634,775 647,470

	ESTIMATED				ESTIMATED				ESTIMATED			
	CY 2020				CY 2021				CY 2022			
	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund
Cathedral City	1,626,866	288,439	23,075	23,075	1,708,209	369,782	29,583	24,104	1,793,619	455,192	36,415	24,587
Desert Hot Springs	1,792,027	317,722	25,418	25,418	1,881,628	407,323	32,586	26,552	1,975,709	501,404	40,112	27,083
Indian Wells	8,741,506	1,549,847	123,983	123,988	9,178,581	1,986,922	158,954	129,519	9,637,510	2,445,851	195,668	132,109
Indio	3,793,419	672,564	53,805	53,805	3,983,090	862,235	68,979	56,205	4,182,245	1,061,390	84,911	57,330
La Quinta	8,240,475	1,461,017	116,881	116,881	8,652,499	1,873,041	149,843	122,095	9,085,124	2,305,666	184,453	124,537
Palm Desert	13,309,447	2,359,732	188,779	188,779	13,974,919	3,025,204	242,016	197,200	14,673,665	3,723,950	297,916	201,144
Palm Springs	28,318,478	5,020,796	401,664	401,664	29,734,402	6,436,720	514,938	419,582	31,221,122	7,923,440	633,875	427,974
Rancho Mirage	6,941,202	1,230,658	98,453	98,453	7,288,262	1,577,718	126,217	102,845	7,652,675	1,942,131	155,170	104,902
Totals	\$72,763,420	\$12,900,775	\$1,032,062	\$1,032,062	\$76,401,590	\$16,538,945	\$1,323,116	\$1,078,102	\$80,221,669	\$20,359,024	\$1,628,722	\$1,099,664

Operation Budget: 1,056,963 1,078,102 1,099,664
 Operation AND Maintenance Budget: 660,419 673,628 687,100

	ESTIMATED				ESTIMATED				ESTIMATED			
	CY 2023				CY 2024				CY 2025			
	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund	Total TOT	Incremental Growth	Calculated To Fund	Actual To Fund
Cathedral City	1,883,300	544,873	43,590	25,078	1,977,465	639,038	51,123	25,580	2,076,338	737,911	59,033	26,091
Desert Hot Springs	2,074,494	600,189	48,015	27,624	2,178,219	703,914	56,313	28,177	2,287,130	812,825	65,026	28,740
Indian Wells	10,119,386	2,927,727	234,218	134,751	10,625,355	3,433,696	274,696	137,446	11,156,623	3,964,964	317,197	140,195
Indio	4,391,357	1,270,502	101,640	58,476	4,610,925	1,490,070	119,206	59,646	4,841,471	1,720,616	137,649	60,839
La Quinta	9,539,380	2,759,922	220,794	127,028	10,016,349	3,236,891	258,951	129,569	10,517,166	3,737,708	299,017	132,160
Palm Desert	15,407,348	4,457,633	356,611	205,167	16,177,715	5,228,000	418,240	209,270	16,986,601	6,036,886	482,931	213,456
Palm Springs	32,782,178	9,484,496	758,760	436,533	34,421,287	11,123,605	889,888	445,264	36,142,351	12,844,669	1,027,574	454,169
Rancho Mirage	8,035,309	2,324,765	185,981	107,000	8,437,074	2,726,530	218,122	109,140	8,858,928	3,148,384	251,871	111,322
Totals	\$84,232,752	\$24,370,107	\$1,949,609	\$1,121,658	\$88,444,389	\$28,581,744	\$2,285,540	\$1,144,091	\$92,866,608	\$33,003,963	\$2,640,317	\$1,166,973

Operation Budget: 1,121,658 1,144,091 1,166,973
 Operation AND Maintenance Budget: 700,842 714,859 729,156

**Agreement to Establish and Fund CV Link Operations and
Maintenance Fund
Draft 3/24/2015**

This Agreement is made by and between the Coachella Valley Association of Governments ("CVAG") and those of the following jurisdictions that become signatories to this Agreement: City of Cathedral City, City of Coachella, City of Desert Hot Springs, City of Indian Wells, City of Indio, City of La Quinta, City of Palm Desert, City of Palm Springs, City of Rancho Mirage (collectively, the "Cities,") and the County of Riverside (the "County").

Whereas, CV Link is a multiple use regional arterial that allows low speed electric vehicles, bicycles, and pedestrians to travel efficiently and safely throughout the Coachella Valley; and,

Whereas, CV Link generally follows the Whitewater River / Coachella Valley Stormwater channel through the cities of Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio and Coachella; and,

Whereas, additional connections to CV Link, including one to the City of Desert Hot Springs, will provide even more residents and visitors access to the project; and,

Whereas, CV Link provides an alternative northwest-southeast route through the urbanized core of the Coachella Valley and generally parallels Highway 111; and,

Whereas, CV Link will relieve traffic congestion and improve air quality by allowing motor vehicle drivers to shift to non-polluting modes of transportation; and,

Whereas, CVAG develops a Transportation Project Prioritization Study and funds regionally significant transportation projects through a voter approved sales tax increase known as "Measure A," and other sources; and,

Reference D

Whereas, Measure A permits CVAG to use regional Measure A sales tax revenues to fund preventative maintenance of regionally significant arterials; and,

Whereas, one of the Coachella Valley's most pressing health challenges is the increase in obesity related diseases and CV Link offers an accessible opportunity for residents and visitors to exercise on a high quality, all-weather path/trail; and,

Whereas, over 40,000 students attend schools within one mile of CV Link, making CV Link a safe, convenient opportunity for some of those students to make their way to and from school; and,

Whereas, the Coachella Valley Economic Partnership, the Convention and Visitors Bureau, the American Lung Association, and dozens of other organizations have offered letters of support for the project; and,

Whereas, CVAG's member jurisdictions have approved an "Implementation Agreement Authorizing CVAG to Manage and Administer the Regional Transportation Program" (the "Implementation Agreement"); and,

Whereas, CVAG has assembled over \$70 million of commitments for the cost to design, engineer and construct CV Link; and,

Whereas, a regular operations and maintenance program will keep CV Link a first class amenity in the region; and,

Whereas, an economic impact assessment of CV Link was undertaken showing CV Link to generate nearly \$1.5 billion of benefits through 2035 to the regional economy, over half of which is attributed to tourism, special events and their secondary impacts.

Now, therefore, the parties hereby agree as follows:

THE O&M FUND

1. CVAG will create a CV Link Operations and Maintenance Fund ("CV Link O&M Fund").
2. Each Participating Jurisdiction agrees to provide funding for the O&M Fund that is equal to 8% of that portion of its annual TOT revenue that is in excess of the Base Amount ("O&M Contribution"). The Base Amount is the sum of:
 - (a) The total TOT revenue collected in the Participating Jurisdiction during calendar year 2016, plus
 - (b) Any increases in the annual TOT revenue attributable to a New Hotel, as defined below, during the first five calendar years in which the New Hotel is in operation; plus
 - (c) Any increases in annual TOT revenue attributable to a rate increase in the TOT adopted by the Participating Jurisdiction.
3. The first O&M Contribution shall be due on May 1, 2018 for TOT revenues collected during calendar year 2017. Thereafter, the O&M Contribution shall be due on May 1st of each subsequent year for TOT revenues collected during the previous year.
4. Once the CV Link O&M Fund is fully funded to the level of the O&M estimate and/or budget approved by the CVAG Executive Committee, no further O&M Contribution shall be required and all amounts collected above that estimate and/or budget shall be returned, in accordance with contribution proportions, to the Participating Jurisdictions.

5. The CV Link O&M Fund can be used to pay for CV Link operations, maintenance, repair, replacement, cleaning, trash pickup, utilities, security, enhancements, or any other purpose related to CV Link, or listed in an approved O&M plan, and/or directly approved by the CVAG Executive Committee.
 6. With approval by a majority of its member jurisdictions, CVAG may transfer Regional Measure A funds to the CV Link O&M Fund for uses consistent with an approved O&M plan and consistent with the intent of Measure A to support preventative maintenance on regional arterials. Eligible funds from other sources may also be deposited in the O&M Fund.
- Reference E
7. Funds from the CV Link O&M Fund shall only be used to support the above O&M purposes on those portions of CV Link that are located within the Participating Jurisdictions.
 8. CVAG shall adopt policies and procedures for the collection and administration of the O&M Fund by formal resolution(s) of its Executive Committee. Thereafter, each Participating Jurisdiction shall remit its O&M Contribution in compliance with the provisions of all such resolutions adopted by CVAG.

DEFINITIONS

1. "Participating Jurisdiction(s)" shall mean those Cities and the County that become signatories to this Agreement.
2. "Hotel" has the same meaning as that set out in the Participating Jurisdiction's ordinance that provides for the collection of TOT.
3. "TOT" refers to the Transient Occupancy Tax collected by a Participating Jurisdiction, as defined in that jurisdiction's municipal code.
4. A "New Hotel" is any Hotel that commences operations after January 1, 2014; but shall not include any new Short-Term Vacation Rentals, as defined below. "Commences operation" shall refer to the first time that any Hotel use has been made at or on a particular parcel, such that a change in ownership, name, renovation, or similar changes to a Hotel that was in operation prior to January 1, 2014, shall not constitute a New Hotel for purposes of this Agreement.
5. "Short Term Vacation Rentals" refers to privately owned residential dwellings, such as, but not limited to, single-family detached or multiple-family attached units, apartment houses, condominium, cooperative apartments, duplexes, or any portion of such dwellings, that are rented for occupancy for dwelling, lodging, or sleeping purposes for any period of time less than twenty-seven consecutive days, counting portions of calendar days as full days, in exchange for any form of monetary or non-monetary consideration such as, but not limited to, trade, fee, swap or any other in lieu of cash payment.

GENERAL PROVISIONS

1. This Agreement shall terminate with the Implementation Agreement in 2038, unless the Implementation Agreement is extended. In the event that the termination date of the Implementation Agreement is extended, then the term of this Agreement shall be deemed extended to the same new termination date.
2. This Agreement may be executed in one or more counterparts and when a counterpart shall have been signed by each party hereto, each shall be deemed an original, but all of which constitute one and the same instrument.
3. This Agreement shall be effective as to each Participating Jurisdiction on the date of execution by the respective Participating Jurisdiction, such that any of the Cities/County listed above in the first paragraph may be added as a party to this Agreement at any time.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:

ATTEST:

CITY OF CATHEDRAL CITY

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF COACHELLA

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF DESERT HOT SPRINGS

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF INDIAN WELLS

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF INDIO

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF LA QUINTA

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF PALM DESERT

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF PALM SPRINGS

By: _____
City Manager

By: _____
Mayor

ATTEST:

CITY OF RANCHO MIRAGE

By: _____
City Manager

By: _____
Mayor

ATTEST:

COUNTY OF RIVERSIDE

By: _____
Clerk of the Board

By: _____
Chair

ATTEST:

CVAG

By: _____
Tom Kirk,
Executive Director

By: _____
Jan Harnik
Chair

County reps, civic leaders urge action to reinstate funds

City News Service

INDIO - Riverside County supervisors, labor leaders and civic activists Friday urged state lawmakers to patch a funding gap exceeding three quarters of a billion dollars that, if unaddressed, may leave the county and other jurisdictions unable to proceed with major transportation projects.

"You don't always see business and labor agree, but we need a transportation funding package," said John Hakel, executive director of the Southern California Partnership for Jobs.

He was among about 10 people who spoke during a news briefing at the Interstate 10/Jefferson Street interchange in Indio, where an infrastructure improvement project is underway. It was used as an example of the projects imperiled over the next five years by an anticipated \$754 million deficit in the State Transportation Improvement Program, or STIP, announced last week by the California Transportation Commission.

Officials said the shortfall will impact four projects in Riverside County: the Coachella Valley Link, or multi-use path, between Coachella and Palm Springs; the Interstate 15 French Valley Parkway Interchange in Temecula; the state Route 60 truck lane additions in the Banning Pass; and expansion of a connector bridge to Interstate 215 in western River-

side County.

The total five-year loss to the county is estimated to be \$84 million.

Supervisor Chuck Washington expressed hope that all sides in the Legislature would "come together" to find a solution to keep the projects on track.

Supervisor Marion Ashley said lawmakers need to pass — and the governor needs to sign — "a funding package immediately." Those sentiments were echoed by Coachella Mayor Steve Hernandez, who noted that the inland region "is just one of hundreds in California that have a backlog" of transportation projects that are in critical of money.

Proponents of restoring infrastructure funding have formed a united front under the "Fix Our Roads" coalition, based in Sacramento.

Deferred maintenance on the state highway system totals about \$59 billion — money required to return the system to satisfactory condition — while roughly \$78 billion is needed for repairs and upgrades on local streets and roads throughout California, according to the campaign. According to the California Transportation Commission, declining gas tax revenue is to blame for the STIP losses. Even though the state's gasoline tax is among the highest in the nation, revenues have fallen as pump prices have spiraled south thanks to the oil price slump.

Legislator seeks to use rail funds for roadwork

City News Service

RIVERSIDE - A Riverside County lawmaker on Tuesday proposed using money earmarked for the California High-Speed Rail Project to pay for improvements to the state's deteriorating roads, highways and bridges.

"Our roads are crumbling. Fifty-nine billion (dollars) is needed for maintenance, and the Democrat majority's answer is to raise our taxes," said Assemblywoman Melissa Melendez, R-Lake Elsinore.

"That's not the answer. Our problem is not a lack of funding; it is poor spending priorities," she said. "Let's allow the people to choose between the \$68-plus-billion high-speed rail or quality roads. I think we all know what they'll choose."

Melendez's AB 2049 seeks to redirect bond funding intended for the rail line to cover infrastructure projects statewide.

Last month, the California Transportation Commission announced that \$754 million in State Transportation Improvement Program, or STIP, appropriations would have to be cut over the

next five years due to changes in the economy.

The total loss to Riverside County was estimated to be \$84 million, threatening at least four area projects.

Gov. Jerry Brown has proposed raising vehicle license fees and state excise taxes to fund road repairs. Melendez and other Republican lawmakers argue that Californians are taxed enough.

High-speed rail has been in the works since 2009, without any major progress. A majority of voters approved bond issuances in support of the project in 2008.

According to the California High-Speed Rail Authority, the goal is to build a bullet train capable of taking commuters from Los Angeles to San Francisco in 2 hours, 40 minutes or less.

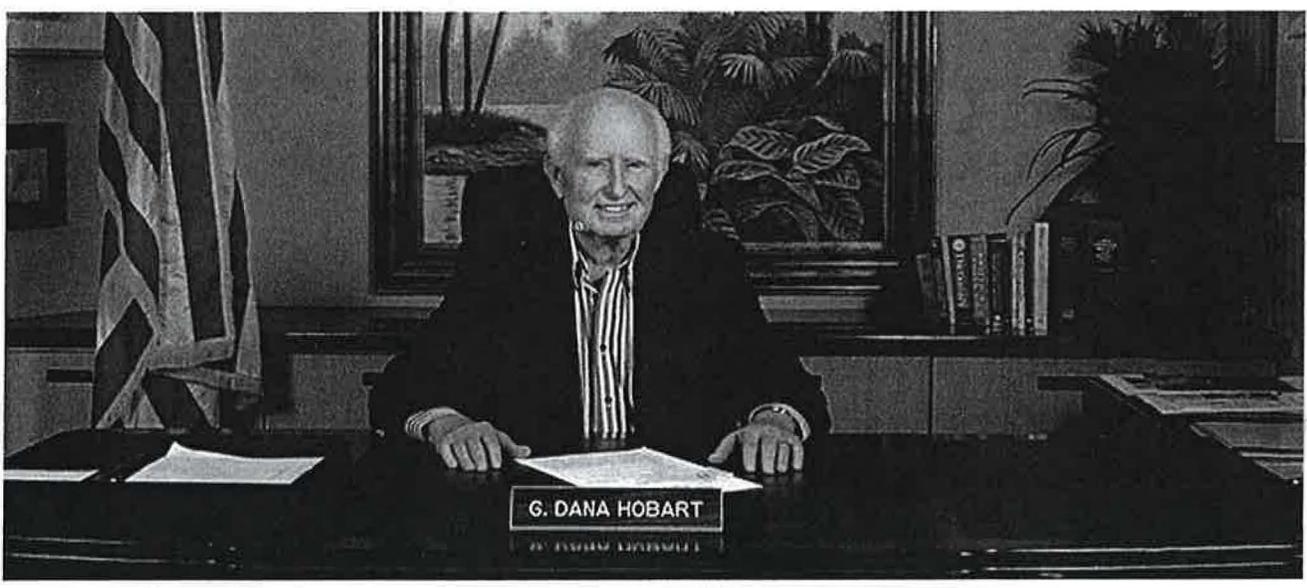
The nonprofit Reason Foundation released a study in 2013 estimating construction costs will top \$70 billion — double the \$33 billion that proponents said would be needed.

"Ensuring quality roads is a fundamental responsibility of government, and the Democrat majority has failed the people of California in that regard," Melendez said.

From: Gdanahobart@aol.com
Subject: Fwd: FW: April 12th Ballot Measures
Date: February 4, 2016 at 8:42 PM
To: shenry@cathedralcity.gov, greg@gregpettis.com, jaguilar@cathedralcity.gov, skaplan@cathedralcity.gov, mcarnevale@cathedralcity.gov, shernandez@coachella.org, emartinez@coachella.org, vmperez@coachella.org, bsanchez@coachella.org, rbetts@cityofdhs.org, smatas@cityofdhs.org, joemckeedhs@yahoo.com, parks_yvonne@hotmail.com, azavala@cityofdhs.org, tpeabody@indianwells.com, dreed@indianwells.com, rbalocco@indianwells.com, dhanson@indianwells.com, 4tmjm@verizon.net, lramoswatson@indio.org, gmiller@indio.org, eholmesinindio@gmail.com, tstrange@indio.org, kristyforlaquinta@gmail.com, losborne@la-quinta.org, jpena@la-quinta.org, rradi@la-quinta.org, sweber@cityofpalmdesert.org, rspiegel@cityofpalmdesert.org, sjonathan@cityofpalmdesert.org, vtanner@cityofpalmdesert.org, robertlmoon@yahoo.com, chris.mills@palmspringsca.gov, geoffkorsps@gmail.com, jr66@mac.com
Cc: tjweill@yahoo.com, TCharlie57@aol.com, richardk@RanchoMirageCa.gov, ladyirism@gmail.com

PLEASE DO NOT RESPOND TO ME OR TO ALL

From: Dana Hobart, Mayor Rancho Mirage [mail to:gdanahobart@AOL.COM]
Sent: Thursday, February 4, 2016 8:30 PM
Subject: April 12th Ballot Measures



February 4, 2016

Dear Friends and Neighbors:

The City's April 12, 2016, ballot will contain the usual city council election, but also four Ballot Measures for your consideration. Measure 1 must pass if our residents are to maintain control of our streets and to prevent the Coachella Valley Association of Governments (CVAG) and CV Link from constructing a 20' to 25' swath of cement and compressed granite on or adjacent to our busiest roads, including Highway 111, Bob Hope Drive, and others. Your council unanimously urges **Yes on Measure 1** to prevent CVAG from constructing such a path directly in front of our Library, our Fire Station, our business districts and our residential communities.

Yes on Measure 1 will also prevent the CVAG / CV Link plan from breaking the flow of traffic on Highway 111 where SIX separate at grade crossings of Highway 111 exist. Imagine the traffic disruption with bicyclists, pedestrians and electric vehicle drivers dealing with crossing six separate busy streets with traffic signals. Over the years, our city has spent a-half-million dollars to obtain and maintain synchronization of these signals. The CV Link, on Highway 111, would literally destroy the effectiveness of our synchronization efforts.

The council also unanimously urges **No on Measures 2, 3 and 4**, the Advisory votes.

Resorting to Deception CV Link Exposes Shallow Arguments

The supporters of the CV Link have already begun campaigning against Measure 1. They do it through a biking group (Friends of CV Link) that is sponsored by CVAG.

Their Newsletter of February 2, 2016, is developed around a major deception that exposes their willingness to mislead voters to get votes in the coming election.

In their Newsletter the CV Link advocates falsely proclaim, "*Construction of the CV Link is NOT being paid for by the City of Rancho Mirage. There is no proposal that would raise taxes on local residents. Nor would the project divert funds from existing priorities.*"

First, they deflect the reader when they say, "construction" costs are not being paid by Rancho Mirage while remaining silent about the \$1.6 million in annual costs of Operations and Maintenance which Rancho Mirage and the other cities would share.

It is a fact that the CVAG Executive Director recommended his plan to pay for O&M whereby Rancho Mirage was one of only five cities to pay 90% of the total O&M costs. To date, it is the only plan he has openly recommended, explained and defended.

But back to the 800 lb. gorilla in the room: O&M costs. In Table 26 of CV Link's 2015 Master Plan, and in Table 19 of their 2016 modified edition of the Master Plan there is a Summary of Operations and Maintenance Funding Sources. They explicitly identify "Transient Tax" as a viable source for payment of O&M expenses. Transient Occupancy Tax is Rancho Mirage's life blood as we are not a "property tax" city. Our bed tax receipts (also known as TOT or Transient Tax) are our single greatest source of annual income. TOT goes into our General Fund and is used to pay for police and fire, roadway repairs, administrative expenses, etc.

To claim that CV Link will not raise taxes is deception, because what they take from our general fund will have to be made up in some uncomfortable manner, such as taxes, lost services, fees for services, etc.

It is False to Claim Money Spent on CV Link Will Not Impact Other Priorities

The Newsletter also identifies Measure A funds as a source for CV Link's O&M expenses. That use would negatively impact money for repairs to our roads, highways, intersections and bridges.

In the third paragraph (quoted above) they again mislead by falsely stating the CV Link will not "divert funds from existing priorities." That would be laughable were it not for the pathetic fact that there are about 250 officially designated and ranked debilitated roadways, bridges and intersections in the Coachella Valley long-awaiting their share of Measure A funds. CV Link would take those funds away from deserving projects and use them to build a bike/electric vehicle path. To ask the question is to answer it: Which do we need most?

Considering the virtually daily reports from state and federal governments about the desperate need for roadway repair funds, it is ludicrous for CVAG to push the public into diverting millions upon millions of roadway repair dollars to construct a bike/electric vehicle/jogging pathway. Their realities are not those of the general public who prefer good roads.

Measure A funds are required by the 2002 Ordinance that created this fund to only be used to repair and improve our "crumbling" roadway infrastructure. There is nothing in the ordinance that allows such funds to be diverted to an electric vehicle/bike and pedestrian path. The Ordinance states Measure A funds "will be used for State highways and regional road improvements." It could not be clearer. So, contrary to the false representation, CVAG clearly does intend to "divert funds from existing priorities."

CV Link Also Intends to Divert Rancho Mirage's Bed Taxes

Whom does CV Link designate as the source of paying the annual \$1.6 million operations and maintenance costs of the CV Link over the next 75-years? Table 19 of the January 2016 Master Plan makes clear that they intend to use Transient Occupancy Taxes to pay for O&M expenses. These are tax dollars belonging to Rancho Mirage residents and the other cities with hotels.

Since CV Link began in 2011-2012, there has been just one reported recommendation from CVAG leadership regarding, "Who will pay for the \$1.6 million in operations and maintenance annual expenses over the next 75-years of CV Link's existence." That source is the April 6, 2015

Staff Report written by CVAG's Executive Director which contains the following, in bold: **Recommendation: Approve an**

Agreement to Establish and Fund CV Link Operations and Maintenance Fund.

In his nine-page Staff Report, at page 5, the Executive Director explains his recommended approach: "Under the approach outlined above ...the cities pay into the fund based on 8% of the incremental growth in TOT up to the budget cap..." That statement clearly demonstrates an intention to divert city bed tax funds from existing priorities (such as fire and police) into the CV Link.

We observe that the Friends of CV Link's newsletter avoids mentioning the amount the Executive Director calculated Rancho Mirage's share would be under his 8% TOT plan. At page 6 of the same Staff Report he calculates that as of the 9th year of operations Rancho Mirage's share would have increased from \$22,842 in year one, to between \$111,322 and \$251,871. (No, that is not a typo.)

Conclusion

We may not be able to reduce the speed the CV Link project is moving forward but we can protect the city we care most about. We have told them they can use Ramon Road through our city, but they insist on Highway 111 - the life line of our city.

By voting **YES on Measure 1** we can ensure that CVAG will not trample on our sovereign right to determine the use to be made of our major thoroughfares.

Sincerely,



Dana Hobart
Mayor City of Rancho Mirage

Forward To a Friend

Subscribe to this Newsletter or Update Your Contact Information

This email was sent to you from an email list comprising email addresses gathered from the Registrar of Voters combined with email contacts that participated in the 2014 election. You may unsubscribe from this list using the link below. Unsubscribing from this list will not remove you from the Riverside Registrar of Voters list. Also please note this email list is separate and distinct from any other lists maintained by the *City of Rancho Mirage*.

[To unsubscribe from Email Updates from Dana Hobart Click Here](#)

January 21, 2016

GENERAL MUNICIPAL ELECTION APRIL 12, 2016

Rancho Mirage's months-long effort to secure a public vote regarding the CV Link has been accomplished. The following is a brief message from our City Clerk:



"On the April 12, 2016 General Municipal Election ballot, Rancho Mirage voters will consider four Measures related to CV Link, together with arguments pro and con. This will be a "by mail only" election. Complete instructions will be sent to you. Ballots will be mailed to registered voters commencing March 14, 2016.

March 28, 2016 is the last day residents may register to vote. For voter registration information simply telephone the City Clerk's office at (760) 324-4511.

According to the City Attorney, of the four measures under consideration, three are "Advisory" while Measure 1, if passed, will provide legal safeguards which would deny CV Link a route through the city's business districts and residential communities unless first approved by a vote of Rancho Mirage residents." Cindy Scott.

ESSENTIAL FACTS REGARDING CV LINK

In discussing the CV Link with members of the public, it becomes obvious that much remains vague and uncertain. The confusion is understandable. This is an effort to identify a number of those issues which deserve greater clarity.

CVAG Put the CV Link "Cart Before the Horse"

- In 2011-2012, during early planning, CVAG did not make a concerted effort to fully inform council members or valley residents of the projected financial impact of the CV Link.

- As the projected costs of construction were increasing, there were no reports issued to all the cities regarding *their* respective financial obligations for the projected cost for 75-years of ongoing Operations and Maintenance ("O&M").
- In short, CVAG's Executive Director and a small handful of elected officials secured Executive Committee support for CV Link without adequately disclosing the scope of the financial obligations to Rancho Mirage and perhaps others.

Golf Carts Not Permitted On CV Link

- Neighborhood Electric Vehicles (NEVs) will be legally permitted on the newly constructed 14' wide portion of the CV Link pathway. They must be licensed by the State, driven only by licensed drivers, carry liability insurance, capable of reaching 25MPH, seatbelts for each seat, turn-signals, etc. Traditional golf carts will not be legal on this NEV pathway portion unless modified to meet NEV specifications.

Cost Of Building CV Link Is Rapidly Rising As Grants Lag

- On October 1, 2013, CVAG's Executive Director signed a document projecting the cost of CV Link to be \$70 Million. Two years later the projected cost is \$100 million, and doubtlessly still rising.
- In the past year, CVAG received no additional grants. Previously, CVAG had raised only \$55 million and nothing during the past year. (CVAG also claims a right to use \$20 million in Measure A funds for construction. A contention vigorously disputed.)

Unsubstantiated Health Benefits Claims

- A Desert Sun article (12/8/2015) summarized a health study commissioned by CVAG and the County: "CV Link will do little to help valley air quality."
- The study also confirmed that "CV Link offers less benefits for lower-income communities" where the need is greatest. Diabetes rages in the East Valley, but the CV Link pathway is located too far from residents in Coachella and Indio to expect any positive statistical effect or use as part of a health care regimen.

Policy Reversal: O&M Will Require Local Funding

- The CV Link Master Plan stated as late as March 2015: "Operations and Maintenance Will Not Require Local Funding." On March 30, 2015, CVAG informed Rancho Mirage that the commitment is no longer viable. Now CVAG projects that 100% of O&M will be paid with local funding.

Mr. Kirk Has "Recommended" 5-Cities Carry the O&M Expenses

- CVAG Executive Director Kirk "Recommended" an O&M formula to cover the

\$1,616,900 annual costs entirely with local funds. He proposed in April 2015 that \$600,000 annually of Measure A funds be diverted to O&M, with the remaining \$1 million being paid by five cities, including Rancho Mirage, using their bed tax (TOT) revenue.

CVAG Understates Projected O&M Costs

- CVAG claims to have reduced annual O&M costs from \$1.6 Million to about \$1 million. The alleged cuts cannot be justified and are unsustainable.
- Example #1: CVAG claims to have reduced Operations by reducing the entire staff from 2 full time employees to ½ person. Managing this project will require considerably more than two people considering the pathway will be "open" 24-hours per day, seven days a week. Consider this partial list of operations expenses: *working in shifts; vacations and holidays managers required; personnel services; monitor contractors; organizing of events; payment of vendors; dealing with vendors; issues re: required tax forms to vendors; making management level decisions that contractors cannot make; answer phone calls from trail users; media communication; manage the complete requirements of all the grants received; maintain official records; establishing policy; follow-up on audits; double checking CVAG claims for reimbursement; handle banking transactions; interaction/schedule meetings with cities re street difficulties, roadblocks etc.; interaction/scheduling meetings with City Police Departments; Interaction/scheduling meetings with City Fire Departments; etc., etc.*
- Example #2: CVAG claims to have saved \$553,100 by eliminating all 10 safety Rangers identified in the Master Plan.
- Plus, CVAG has budgeted \$zero for police, paramedics or liability insurance.

Cities Will Frequently Be Sued

- There will be lawsuits concerning injury accidents. CVAG has budgeted nothing for liability insurance to protect the cities from liability and the obligation to pay large judgments and settlements.
- This will require cities to increase their own insurance premiums for additional coverage to protect their residents as they will be named defendants in virtually every negligence-based accident lawsuit that happens in their city.

Residential Security Is At Risk

- With CV Link's 24-hour accessibility through and adjacent to residential neighborhoods, opportunities for burglary and other criminal conduct will likely increase. CVAG acknowledges that "enforcement ... helps reduce the opportunity

for crime..." yet CVAG budgets nothing at all for law enforcement even as they eliminate the ten Rangers from the O&M budget.

The "Use It Or Lose It" Claim

- CVAG leadership, including some mayors, claim that the money CVAG has received for the CV Link is "free money" that will be "lost to the valley if we don't spend it." The claim is false.
- CV Link announced it has accumulated \$75 million toward the \$100 million current cost projections. Contrary to their representations, at least 82% of that figure would remain eligible for use in the Coachella Valley. It is not money the valley would lose. CV Link's Master Plan identifies the following sums as "Confirmed CV Link Funding."

Confirmed CVL Funding	Amount	Stays in Valley	Could Leave
Desert Healthcare District	\$10,000,000	Yes	
Federal Air Qualify (RCTC)	\$12,600,000	Yes	
SQAQMD (Sentinel Grant)	\$17,400,000	Yes	
State Transportation Grant	\$ 2,000,000	Yes	
CA Active Transportation	\$10,900,000		Could leave
CA Strategic Growth Council	\$ 1,000,000		50% already spent
Riverside County Parks	\$ 750,000		Already spent
Cathedral City Grant	\$ 748,000		Cathedral City option
CalTrans Environ'l Justice	\$ 291,000		Already spent
Regional Measure A Funds	\$20,000,000	Yes	
Total	\$75,689,500		

***82% (\$62,000,000) Stays in Valley**

Of the balance, only \$13,689,500 (18% of the total) would likely be lost to the Coachella Valley, and from that figure over \$1 million has already been spent on the project.

Please forward this message to friends who live in the Coachella Valley part or full time. It is important that basic facts get a widespread public airing.

As always, I will continue to keep you updated on the CV Link and the issues at hand.

RANCHO MIRROR

Winter 2016 / Official publication of the City of RANCHO MIRAGE, California

The Controversial CV Link: Visionary or Boondoggle?

*Multipurpose trail would link desert cities,
but building and upkeep might not be as seamless.*

Imagine a hiking and biking path extending from one end of the sun-drenched Coachella Valley to the other. Sounds wonderful, doesn't it? The concept ties in with the ongoing emphasis on health and wellness, and environmentally, it makes good sense, too.

It has never been a one-size-fits-all undertaking by any means, so it's wise not to get caught up in the hype. It's better to first stop and consider the implications a project of such scope would have on individual cities. The City of Rancho Mirage has done just that, and in keeping with its fiscally responsible reputation, identified and voiced some real concerns over the CV Link's economic impact on our community.

History of CV Link

In the beginning, if anyone had heard of the proposed project at all, they knew it as Whitewater River Bike Path, a name that eventually morphed into CV Link. With a price tag that ultimately grew to \$100 million, the notion sounded promising but not too likely to happen. Initially, the City of Rancho Mirage was supportive of the concept. As a city that prides itself on always being at the forefront of establishing and sponsoring recreational services that appeal to residents and visitors, naturally it would welcome ideas that promised to do the same.

"My original understanding of this project was that it was going to be a bike and jogging path," City Manager Randy Bynder says. "Over time neighborhood electric vehicles (NEVs) were added to the mix and with that, the cost rose exponentially because you have to change the composition of the roadways so as to comport with California requirements. From that point on, I felt the project was not in the best interests of the communities, in particular the community I have an obligation to serve — Rancho Mirage. The increased cost, taken in conjunction with projected operation and maintenance [O&M] expenses, caused me great concern."

CV Link started as a brainchild of Riverside County Supervisor John Benoit and Coachella Valley Association of Governments (CVAAG) Executive Director Tom Kirk, who were looking for creative ways to secure some of the \$50-plus million in air pollution mitigation funds they knew were coming to the region.

Use of Measure A Funds

Another source of funding that CV Link hopes to appropriate is the regional sales tax fund known as Measure A. The tax, which amounts to a half cent per dollar spent, was approved by voters in 1988 with the

intent it be applied to crumbling roads and bridges sorely in need of repair and maintenance. At the time, CV Link wasn't on the voters' radar.

It's no secret that Riverside County's transportation system is woefully underfunded. Benoit himself contributed to a *Press Enterprise* article dated August 21, 2015, which stated that roads in Riverside County rank as some of the worst in the nation. The other primary source of local transportation system funding is a tax applied to gas purchases.

This year, however, every city in Riverside County has seen a decrease of 25 percent in that regard due to the decreasing price of gasoline, the increasing efficiency of cars, and the great strides made in hybrids and plug-in vehicles.

It's been proposed that Measure A funds totaling up to \$20 million be committed to construction of the CV Link, whose first phase is supposed to begin in 2017. CVAG has also identified \$600,000 per year in additional Measure A funds for maintenance, accompanied by a 2 percent annual increase.

"We're lucky in Riverside County," says Isaiah Hagerman, City Administrative Services Director. "Our voters passed this special tax — Measure A — for transportation. Yet even if we ignore the bigger picture of the transportation system being completely underfunded, CVAG has already identified \$3 billion in roadway projects waiting for this funding. CVAG is nevertheless determined to divert those Measure A funds away from the identified streets and road projects and in favor of a no-expense-spared CV Link. I think it's fiscally irresponsible to use our limited transportation funding in this manner."

Electric Vehicles

Adding NEVs to the equation is primarily what boosted the CV Link sticker price to \$100 million. NEVs — not to be confused with traditional golf carts — require a paved path that is completely separate

from pedestrians. According to CVAG's Neighborhood Electrical Vehicle Plan, there are 440 local NEVs registered with the DMV in the Coachella Valley. It's noteworthy that walkers, joggers, and stroller-pushing pedestrians will be relegated to a sideline decomposed granite path and will not be permitted to traverse on the paved roadway reserved for NEVs and bicycles.

"CV Link has grown to encompass a 14-foot-wide NEV/bike path, a separate 6- to 8-foot-wide pedestrian path, solar structures, charging stations, restrooms — it's now this huge facility, which is why it'll cost \$100 million," Hagerman adds. "If it were a walking-hiking-biking trail in keeping with the original concept, the cost would be so much less and there'd be no need to resort to sources like Measure A for funding."

Operation and Maintenance Costs

Fast forward through all the conceptualizing and planning of CV Link to March 2015, when CVAG published a report that put forth the idea of taking the city's Transient Occupancy Tax (TOT) dollars to fund operation and maintenance of the trail. The overall figure for O&M costs has been pegged at \$1.6 million annually with an annual two percent for inflation factored in. Six hundred thousand of that amount has been earmarked for rangers to police the trail, although there has been some discussion about eliminating that particular form of law enforcement as a cost-saving measure. Should that come to pass, other concerns about public safety would arise.

"The 8 percent TOT plan was mentioned in a CVAG staff report dated April 6, 2015, and there was a section that showed what each city would pay

“If it were a walking-hiking-biking trail in keeping with the original concept, the cost would be so much less and there'd be no need to resort to sources like Measure A for funding.”

— Isaiah Hagerman

CV LINK AND THE CITY

Residents can learn more about the city's concerns regarding the proposed CV Link project by watching RMTV any day of the week at 8 a.m., 2 p.m., 8 p.m., and 2 a.m. An hour-long roundtable discussion between the Mayor, the Mayor Pro Tem, the City Manager, and others will help viewers understand the challenges the city faces. RMTV can be found on your cable television at Channel 17.

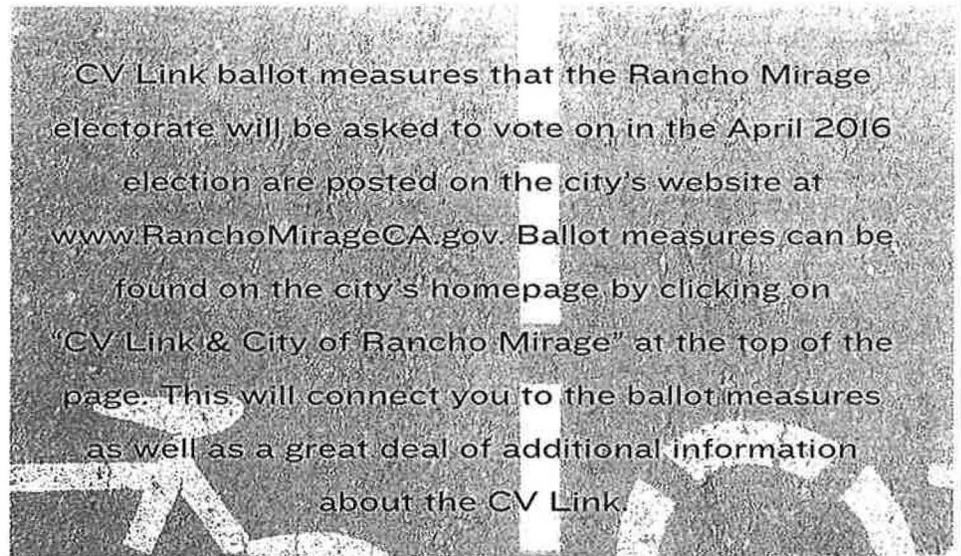
The roundtable discussion can also be viewed on the city's website at www.RanchoMirageCA.gov, at any time of the day or night. A link to the video can be found at the top of the home page of the city's website.

over a nine-year period," Bynder says. "It would have placed over 90 percent of the entire O&M budget for the next 75 years — based on TOT income — on five cities, including Rancho Mirage. What happens if a city that says they'll join and pay changes their mind in one or five or 10 years? Who then picks up the load? What happens if a city goes bankrupt during that period of time? There are innumerable unaddressed questions concerning the financing of this project."

The Route

CV Link's planned route through a number of valley cities hugs the lip of the Whitewater Wash fairly closely. In Rancho Mirage, however, the trail is slated to cross Highway 111 at two points, possibly even three. This would wreak havoc with traffic signal synchronization, in which the city has invested hundreds of thousands of dollars to maintain vehicle flow. "There's a huge air quality impact if you stop traffic unnecessarily," Hagerman adds. "Vehicles are idling, then they have to get back up to traveling speed — and the act of speeding up uses the most gas and emits the most pollutants."

At one point, the proposed CV Link route passes right in front of the Rancho Mirage fire station on Highway 111, complicating matters for our first responders hoping to speedily exit as they respond to emergency calls. The idea of CV link—traveling pedestrians, bicycles, and NEVs regularly intersecting with Highway 111 traffic is perplexing to say the least. "No other city is being asked to absorb that into the heart of their commercial district or thoroughfare," Hagerman says.



Safety and Security

Accidents and emergencies can happen just as readily on thoroughfares like CV Link, despite the reduced speeds typically encountered. Emergency vehicles can face access problems along certain stretches, and it's a certainty that firetrucks can't drive on any section.

From a financial standpoint, safety and security issues are sure to impact individual city budgets, many of which are already struggling to keep up with the average 7 percent increase in police and fire services that occurs each and every year. If an accident were to happen along a stretch within any city's limits and they didn't or weren't able to respond, the city could be found negligent.

An Alternative

Although the southern section of the City of Rancho Mirage is very developed, more northern points on its

map show real potential for a project like CV Link. It could run parallel to Rancho Mirage High School, for example, and other landowners of undeveloped parcels in the area would probably view it as a positive. It would likely spur economic development of vacant areas in practically all the cities.

"Instead of attempting to shoehorn a project like CV Link into an already developed portion of our city, future development can incorporate the CV Link," Bynder says. "Obviously such a project would deliver benefits — and we would never oppose its development in principle. We'd have to be comfortable with the O&M and ongoing financial commitment — and, of course, the route — before we ever said yes. As a forward-thinking community, we're always interested in the prospect of exciting new recreational activities for residents and visitors."



Loretta Ferraro

COMMUNITY
ACTIVITIES
COMMITTED

Loretta Ferraro 67, of Indian Wells passed away peacefully January 31, 2016 at her home after a courageous 17 year battle with cancer. She was born March 5, 1948 to Louis and Rovena Ferraro in Framingham, Massachusetts.

She is survived by her husband Richard Balocco, her first cousin Faye Brown of Virginia Beach and Faye's two children Tom Brown and Jeni Kendall and many other relatives on the east coast.

Loretta graduated from Marian High School in Framingham in 1966 then attended and graduated from Elms College with a degree in History and Education. After graduation she took a teaching job at a small catholic school and from there began a sales career at Chesebrough-Pond's where she was the first woman hired in medical sales. She excelled in medical sales and was awarded sales person of the year with a plaque reading for "his" outstanding achievement, the gender barrier still strong in 1978. The company realized that they made an error on the plaque but Loretta would not let them correct it and it hangs on our wall today. She was a strong proud woman which carried her through her fight with cancer.

In 1980 she accepted a transfer to San Francisco from Chicago where the flowers were in bloom and the weather was beautiful. In 1986 she began a real estate career in Marin County where she was awarded the top sales person in her first year in real estate. She was consistently a top performing agent in Marin County and went on to found Marin Realty Experts, a real estate sales and marketing company. In 2007 she moved to the desert to join Richard Balocco who became the President/CEO of Desert Arc. Loretta loved the desert and especially the City of Indian Wells where she was an active member of the city's Social Committee. Throughout her life Loretta traveled extensively in many parts of the world and made new friends wherever she went. She always had a great love for movies and followed the careers of many movie and TV stars. Loretta loved parties and friends as well as holidays. She had decorations for every time of the year. Shortly before her passing she had the Valentine's Day decorations put up.

Loretta joined HomeSmart Professionals in Palm Desert and was an active real estate agent right up until the end of her life. She made many friends and remained a role model for her cancer support group always positive and helpful for those fighting cancer. In an interview with the Desert Sun in 2010 Loretta was quoted as follows: "Every day I live with cancer, I choose not to suffer, it really does change your life and makes everything else seem so insignificant."

There will be a service at Sacred Heart Church in Palm Desert on February 19th at 2 pm with a celebration of life reception to follow. In her memory donations may be made to the American Cancer Society or Desert Arc. To view and sign her guestbook please visit desertsun.com/obituaries