



City of Hidden Hills

6165 Spring Valley Road * Hidden Hills, California 91302
(818) 888-9281 * Fax (818) 719-0083

9C

MEMORANDUM

TO: Honorable Mayor and Members of the City Council

FROM: Kerry Kallman, City Manager

DATE: June 25, 2018

SUBJECT: Approval of Proposed Agreement with Network Television Time to Provide Consulting Services Related to City Council Meeting Broadcasts and Authorization to Staff to Purchase New Broadcast Equipment

Background

The City began broadcasting City Council meetings via traditional cable television in 1990. This first system was located at the old City Hall and jointly shared with the Community Association. In 1995, a new system was purchased and installed in the current City Hall location. In 2013, the City spent approximately \$10,000 to upgrade the broadcast system.

For the last two years, the City has received numerous complaints regarding the City Council meeting broadcast. These complaints range from poor audio quality, to blurred pictures to complete failure of equipment. Each time, the City attempts to diagnose the problem and, on several occasions, hired a technician to either fix or replace failing equipment. The age, lifespan, and functionality of each piece of broadcast equipment is not known, which leads to difficulties in diagnosing and/or replacing individual components. Finally, the electronic bulletin board that displays information slides on the government channel between City broadcasts has failed and needs to be replaced. Currently, a wide shot of the Council Chambers is broadcast when City Council meetings are not live.

Discussion

Staff has sought guidance from three separate consultants on the City's broadcast equipment. Due to the nature of the equipment and lack of historical knowledge, all three consultants have recommended a complete overhaul or "starting over" on the system. Based on the foregoing, staff is recommending the City enter into an agreement with Network Television Time (NTT) to design and install a new broadcast system. NTT, formerly named GovTv is a locally based leader in government broadcasting. NTT is currently the broadcast consultant for the counties of Los Angeles, Orange, Bay Area Headquarters Authority, City of Los Angeles Department of Water and Power, and the City of Westlake Village. NTT representatives have reviewed the City's

current system several times and have designed a more modern and user-friendly system that strives to create a professional looking broadcast that can be easily operated.

The proposed new system essentially replaces all existing components and adds one additional camera. Also, an input dedicated to the recently installed Council Chamber's monitor will allow for presentations to go out over the air seamlessly thereby allowing the home viewer access to whatever information is displayed on the screen. Finally, NTT has recommended a new electronic bulletin board service that will allow the City to create and display informational slides when not broadcasting. In addition to designing and installing the equipment, NTT will train staff and operators on its use and be available for ninety days following completion. The proposed agreement with NTT also provides for as needed on-call service should there be any issues after the first ninety days.

If approved, the proposed new broadcast system could interface with online streaming services and/or other television providers, should the City Council want to explore those options in the future. Having said that, staff is recommending updating the broadcast system and quality as outlined in this report and attached proposal first, before discussing new broadcast mediums.

Fiscal Impact

The attached proposal with NTT for broadcast consulting, design, installation, and training is for \$20,000. NTT has also recommended a budget of \$25,000 for equipment purchase to be made by the City separate from the NTT agreement. Both of these costs are contained in the proposed FY 2018/19 City budget.

Recommendation

It is recommended that the City Council approve the attached agreement with NTT to provide design, installation, and training services of a new City Council Chambers Broadcast system and authorize staff to purchase recommended equipment for the system for an amount not to exceed \$25,000.

Attachment

- A. Proposed Agreement
- B. NTT Proposal

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the 25th day of June, 2018 ("Effective Date") by and between the City of Hidden Hills, a municipal corporation ("City") and Network Television Time, Inc. ("Consultant").

RECITALS

A. City desires to obtain certain professional services for the installation of certain audio and visual equipment as well as consulting and training services as further described in this Agreement.

B. Consultant represents that it is qualified by virtue of experience, training, education and expertise to provide the services required by the City.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Term of Agreement.** This Agreement shall commence on the Effective Date and shall remain and continue in effect until the Services are completed, unless sooner terminated as provided in Section 14.

2. **Consultant's Services.**

A. Scope of Services. Consultant shall perform the services described in the scope of services ("Services") attached as Exhibit A.

B. Standard of Performance. Consultant shall at all times faithfully and competently perform the Services in accordance in a manner satisfactory to the City and consistent with the skill and standard of care generally exercised by like professionals under similar circumstances.

C. Time of Performance. Consultant shall commence the Services upon receipt of a written notice to proceed from City and shall perform all Services in conformance with the timeline set forth in Exhibit A or as otherwise established by the Parties in writing.

D. Personnel. Consultant has, or shall secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services shall be performed by Consultant or under its supervisions, and all personnel engaged in the work shall be qualified to perform such Services.

E. Compliance with Laws. Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect the performance of its Services under this Agreement. Consultant shall at comply with all applicable federal, state and local laws, ordinance, codes and regulations. The City shall not be liable at law or in equity occasioned by failure of Consultant to comply with this provision.

F. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the performance of the Services under this Agreement, including a business license.

3. **Compensation.**

A. Compensation. City shall compensate Consultant for Services satisfactorily rendered in an amount not to exceed Twenty Thousand Dollars (\$20,000) as further described in Exhibit B ("Compensation"). Said compensation shall constitute reimbursement of Consultant's fee for the Services as well as the actual cost of any staff time, other direct or indirect costs or fees, including the work of employees, consultants and subcontractors, equipment, materials, and supplies necessary to provide the service (including all labor, materials, delivery, tax, assembly, and installation, as applicable).

B. Expenses. City shall reimburse Consultant for those expenses expressly set forth in Exhibit B. Any expenses incurred by Consultant which are not expressly authorized by this Agreement will not be reimbursed by City.

C. Additional Services. City shall not allow any claims for additional Services performed by Consultant, unless the City Council or City Representative, as applicable, and the Consultant Representative authorize the additional Services in writing prior to Consultant's performance of the additional Services or incurrence of additional expenses. Any additional Services or expenses authorized by the City Council or City Representative shall be compensated at the rates set forth in Exhibit B, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional Services and expenses in accordance with Section 4 of this Agreement.

4. **Method of Payment.**

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis or as otherwise set forth in Exhibit B, for actual Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within thirty business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 business days after receipt. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

5. **Independent Contractor.**

A. Consultant is and shall at all times remain as to City a wholly independent contractor. Personnel performing the Services on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither the City, nor any of its officers, employees, or agents shall have control over the conduct of Consultant, or its officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or

in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or bind the City in any manner.

B. Consultant expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Consultant shall not be in any way an employee of the City. Consultant shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers compensation and unemployment insurance and that of his/her employees or subcontractors. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

6. Responsible Principal(s). Consultant's responsible principal, Bruce Arditte, shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between City and Consultant. Designation of another Responsible Principal by Consultant shall not be made without prior written consent of City. City's Responsible Principal shall be Kerry Kallman, who shall administer the terms of the Agreement on behalf of City.

7. Release of Information.

A. Consultant covenants that all data, reports, documents, studies, drawings, plans, maps, models, photographs, discussion, or other information (collectively "Data and Documents") developed by Consultant in the performance of this Agreement and/or information received by Consultant or provided for the performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. Consultant, its officers, employees, agents, or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Manager, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant give the City notice of such court order or subpoena.

B. Consultant shall promptly notify the City should Consultant, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide City the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

8. Ownership of Documents. All Data and Documents required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data and Documents submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original Data and Documents, including computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services, whether in draft or

final form, shall be provided to the City within five days of City's written request and shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

9. Conflicts of Interest. Consultant affirms that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained.

10. Indemnification.

A. To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, sub-consultants, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

B. Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, Consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

11. Insurance.

A. Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1. Commercial General Liability Insurance, with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insured.

2. Automobile Liability Insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

3. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance (with limits of at least \$1,000,000).

4. If this box is checked, Professional Liability Insurance (errors and omissions) that covers the Services to be performed under this Agreement, in the minimum amount of \$2,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. Further, Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the Services required by this Agreement.

B. Acceptability of Insurers. All insurance policies required by this Agreement shall be issued by an insurer authorized by the State of California to transact business of insurance with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide or by an insurer acceptable to the City's Risk Manager.

C. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by the City's Risk Manager prior to commencement of performance. Current certificates of insurance shall be kept on file with the City Clerk at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

D. Additional Insured Status. The commercial general and automobile liability policies shall provide or be endorsed to provide that the City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

E. Primary and Non-Contributing. The insurance policies provided by Consultant shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

F. Consultant's Waiver of Subrogation. The insurance policies provided by Consultant shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

G. Self-insured Retentions. Any self-insured retentions must be declared to and approved by the City's Risk Manager. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City's Risk Manager.

H. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

I. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

J. Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with this Section 11 if they include any limiting endorsement of any kind that has not been first submitted and approved by the City in writing.

K. Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

L. Timely Notice of Claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

M. Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

N. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 10 of this Agreement.

O. Risk Manager Authority. The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in paragraph A herein. In such case, the Consultant shall comply with the insurance provisions required by the City's Risk Manager.

P. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage which meets all of the requirements of this Section 11.

12. **Mutual Cooperation.**

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

13. **Records and Inspections.** Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the Services. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three years after receipt of final payment.

14. Suspension or Termination of Agreement.

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, after giving written notice to Consultant at least ten (10) days before the suspension or termination is to be effective. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event of City's termination of this Agreement due to due to no fault or failure of performance by Consultant, City shall pay Consultant based on the actual value of work satisfactorily performed up to the effective date of termination. Upon termination, Consultant shall submit an invoice to the City pursuant to the provisions of Section X of this Agreement. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

15. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

16. Default.

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant.

B. If the City Manager or his designee determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

17. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by email before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

If to City:

Kerry Kallman, City Manager
6165 Spring Valley Road
Hidden Hills, California 91302
kerry@hiddenhillscity.org

If to Consultant:

Bruce Arditte, Senior Account Manager
Network Television Time, Inc.
1014 South Westlake Boulevard, Suite 14-305
Westlake Village, CA 91361
barditte@nttbroadcast.com

18. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 18 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

19. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

20. Entire Agreement. This Agreement represents the entire integrated agreement between City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Consultant.

21. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement. The City shall not be obligated or liable under this Agreement to any party other than Consultant.

22. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

23. Final Payment Acceptance Constitutes Release. The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

24. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's reports or plans, or other submittals. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

25. Non-Appropriation of Funds. Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, the Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

26. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior or federal court with geographic jurisdiction over the City of Indio.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Exhibits; Precedence. Exhibits A, B and C constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

29. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

30. Prevailing Wage and Payroll Records. [check if applicable] If this Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code, then Consultant shall comply with the provisions of Exhibit C.

31. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

34. Statement of Experience. By executing this Agreement, Consultant represents that it has demonstrated trustworthiness and possesses the quality, fitness and capacity to perform the Agreement in a manner satisfactory to City. Consultant represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private consultants, and experience in dealing with public agencies all suggest that Consultant is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public City. The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

In witness whereof the parties have executed this Agreement on the date set forth above.

CITY OF HIDDEN HILLS

Steve Freedland, Mayor

ATTEST:

Deana L. Graybill, CMC
City Clerk

CONSULTANT:

Name:
Title:

Name:
Title:

EXHIBIT A
SCOPE OF SERVICES AND TIME OF PERFORMANCE

A. Phase One: Design

Consultant will:

1. Design broadcast system to enable the City to broadcast City Council meetings
2. Design channel playback graphic system to enable City to create and playback informational slides
3. Provide City with design and equipment list for City procurement

B. Phase Two: Installation

Consultant will:

1. Install all equipment procured by City
2. Test installed broadcast system to ensure proper functioning of broadcast system
3. Test installed graphic system to create and playback informational slides

C. Phase Three: Training

Consultant will:

1. Provide installation warranty for ninety (90) days, during which time Consultant will provide immediate troubleshooting service
2. Provide a four (4) hour training of broadcast and graphic systems to designated staff or others, as directed by City

D. Phase Four: Ongoing Systems Service & Repair

Consultant will, on an as-needed basis:

1. Provide scheduled Level One service call within five (5) business days with an operational specialist, as-needed for a period of three (3) years
2. Provide scheduled Level Two service call within ten (10) business days with a broadcast engineer, as-needed for a period of three (3) years

**EXHIBIT B
COMPENSATION**

A. Project Management for Phases One and Two

Flat fee: Five thousand dollars (\$5,000)

B. Phase One: Design

Flat fee: Five hundred dollars (\$500)

C. Phase Two: Installation

Hourly rate: Three hundred dollars (\$300) per hour

Estimated number of hours needed: Forty (40) hours

Total estimated installation cost: Twelve thousand dollars (\$12,000)

D. Phase Three: Training

Flat fee: Two thousand five hundred dollars (\$2,500)

E. Phase Four: Ongoing Systems Service & Repair

One (1) Level One service call (as-needed): Three hundred dollars (\$300)

One (1) Level Two service call (as-needed): Five hundred dollars (\$500)

Total cost: Twenty Thousand Dollars (\$20,000)

- Includes 40 hours of installation work
- Cost of Level One and Level Two service calls not included
- Total cost could be more or less depending on number of hours required for installation and number and type of service calls required