



AGENDA

SPECIAL MEETING OF THE HEMET CITY COUNCIL

February 2, 2012

6:30 p.m.

www.cityofhemet.org

City of Hemet Council Chambers
450 E. Latham Avenue

Please silence all cell phones

**Notice: Members of the Public attending shall comply with the adopted Rules of Decorum in Resolution No. 4148. A copy of the Rules of Decorum are available from the City Clerk.*

Call to Order

Roll Call

ROLL CALL: Council Members Franchville, Krupa and Smith, Vice Mayor
Foreman and Mayor Youssef

Work Study

1. Groundwater Management Plan - Eric Vail, City Attorney
Discussion regarding these items, with possible direction to staff
-

City Council Business

Notice to the Public

The Consent Calendar contains items which are typically routine in nature and will be enacted by one motion by the Council unless an item is removed for discussion by a member of the public, staff, or Council. If you wish to discuss a Consent Calendar item please come to the microphone and state the number of the item you wish to discuss. Then wait near the lectern. When the Mayor calls your item give your last name, and address, then begin speaking. You will have three minutes at that time to address the council.

Consent Calendar

2. **Recommendation by City Manager** - Amendment to Section 5.1 (Severance) of the Employment Agreement for the City Manager
 - a. Approve an amendment to Section 5.1 (Severance) of the Employee Agreement for the City Manager, extending said benefit an additional three (3) months for a total of nine (9) months.
-

Communications From the Public

Anyone who wishes to address the Council regarding items not on the agenda may do so at this time. As a courtesy, please complete a Request to Speak Form, found at the City Clerk's desk. Submit your completed form to the City Clerk prior to the beginning of the meeting. Presentations are limited to three minutes in consideration of others who are here for agenda items. Please come forward to the lectern when the Mayor calls upon you. When you are recognized, you may proceed with your comments.

**Notice: Members of the Public attending shall comply with the adopted Rules of Decorum in Resolution No. 4148. A copy of the Rules of Decorum are available from the City Clerk.*

State law prohibits the City Council from taking action or discussing any item not appearing on the agenda except for brief responses to statements made or questions posed by the public. In addition, they may, on their own initiative or in response to questions posed by the public, ask a question for clarification, provide a reference to staff or other resources for factual information, or request staff to report back to them at a subsequent meeting. Furthermore, a member of the City Council or the council itself may take action to direct staff to place a matter of business on a future agenda.

Closed Session

Notice of Opportunity for Public Comment

Members of the Public may comment upon any identified item on the closed session agenda. Since the Council's deliberation on these items is confidential, the City Council and City Staff will not be able to answer or address questions relating to the items other than procedural questions. At the conclusion of the closed session, the City Attorney will report any actions taken by the City Council which the Ralph M. Brown Act requires to be publicly reported.

3. Conference with Legal Counsel - Anticipated Litigation
One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(b)
-

City Attorney Closed Session Report

4. Conference with Legal Counsel - Anticipated Litigation
One (1) matter of significant exposure to litigation pursuant to Government Code section 54956.9(b)
-

Future Agenda Items

If Members of Council have items for consideration at the next City Council meeting, please state the agenda item to provide direction to the City Manager.

Adjournment

Adjourn to Tuesday, February 14, 2012 at 7:00 p.m. for considerations of items placed on that agenda. The next regular meeting will be held February 28, 2012.



Robert Youssef, Mayor



Staff Report

To: Honorable Mayor and Members of the City Council
From: Brian S. Nakamura, City Manager
Date: February 2, 2012
Subject: Approve an Amendment to Section 5.1 [Severance] of the Employment Agreement for the City Manager

Recommendation:

That the City Council approve an amendment to Section 5.1 [Severance] of the Employment Agreement for the City Manager, extending said benefit an additional three (3) months for a total of nine (9) months and shall read as follows:

5.1 By City Not for Cause. Except as is provided in Section 5.1.1 below, CITY may terminate NAKAMURA for any reason, and at any time, with or without cause, by providing NAKAMURA ninety (90) days prior written notice thereof and nine (9) month's base salary, less applicable deductions, plus applicable accrued PTO and sick leave as provided herein together with any extension of benefits required under California law. CITY may dismiss NAKAMURA notwithstanding anything to the contrary contained in or arising from any Personnel Policies or past CITY practices relating to the employment, discipline, or termination of its employees.

Background:

As a result of the City Manager's evaluation, the City Council has agreed to consider modifying existing language in the City Manager's current Amended and Restated Employment Agreement Section 5.1, regarding severance, which currently reads:

5.1 By City Not for Cause. Except as is provided in Section 5.1.1 below, CITY may terminate NAKAMURA for any reason, and at any time, with or without cause, by providing NAKAMURA ninety (90) days prior written notice thereof and six (6) month's base salary, less applicable deductions, plus applicable accrued PTO and sick leave as provided herein together with any extension of benefits required under California law. CITY may dismiss NAKAMURA notwithstanding anything to the contrary contained in or arising from any Personnel Policies or past CITY practices relating to the employment, discipline, or termination of its employees.

Fiscal Impact:

There is no immediate fiscal impact associated with the amendment, unless the City Council so desires to exercise its rights as per the Amended and Restated Agreement entered into by and between the City of Hemet and Employee.

No other changes and/or modifications are being recommended for the Agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Nakamura', written in a cursive style.

Brian S. Nakamura
City Manager

**EMPLOYMENT AGREEMENT
AMENDED AND RESTATED
For the Position Of
CITY MANAGER**

This Employment Agreement (“Agreement”) is made and entered into this 12th day of July, 2011, by and between the CITY OF HEMET (the “CITY”), a California municipal corporation and general law city, and Brian Nakamura (“NAKAMURA”), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the services of NAKAMURA as City Manager of CITY (“City Manager”), as provided for by the Hemet Municipal Code, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. NAKAMURA desires to accept employment as City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. CITY and NAKAMURA have agreed that this Amended and Restated Agreement will supersede the Employment Agreement for the Position of City Manager, entered into by and between CITY and NAKAMURA, on September 14, 2010, and all Agreements and Amendments entered into previously, in their entirety.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. Position and Duties.

1.1 **Position.** NAKAMURA accepts employment with the CITY as its City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. NAKAMURA shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that the City Manager shall keep the City Council fully apprized of all significant ongoing operations of the CITY. Toward that end, NAKAMURA shall report directly to the City Council and will periodically, or as may be otherwise specifically requested by the City Council, provide status reports to the City Council on his activities and those of the CITY.

1.2 **Period of Employment / Commencement Date.** NAKAMURA shall serve for an indefinite term subject to the provisions contained in the Hemet Municipal Code, as they may be amended from time to time, and this Agreement concerning termination of his services or voluntary separation from service. This Agreement commences and is effective on July 25, 2011, upon being executed by NAKAMURA and the CITY’s Mayor. CITY shall employ NAKAMURA from the date of commencement of his service, as specified in this section, until his employment is terminated in accordance with Section 5 [Termination] of this Agreement. NAKAMURA’s start date of service for the performance of his duties as the City Manager was August 24, 2009 (“Commencement

Date”) or at such other date as the parties hereto shall agree in writing. The modifications to Agreement as reflected in sections 2.1.1 [Temporary 2% Reduction], 3.1.1 [PTO Sell-Back Moratorium], and 5.1 [CalPERS] only, shall commence July 25, 2011.

1.3 **At-Will.** NAKAMURA acknowledges that he is an at-will employee of CITY who shall serve at the pleasure of the City Council at all times during the period of his service hereunder. The terms of the CITY’s personnel rules, policies, procedures, ordinances, resolutions, memorandums of understanding, or collective bargaining agreements (collectively “Personnel Policies”), shall not apply to NAKAMURA, and nothing in this Agreement is intended to, or does, confer upon NAKAMURA any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate his employment, except as is expressly provided in Section 5 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of the CITY to terminate the services of NAKAMURA as provided in Section 5 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of NAKAMURA to resign at any time from this position with CITY, subject only to the provisions set forth in Section 5 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and NAKAMURA, as set forth in Section 5 [Termination] below.

1.4 **Duties.** NAKAMURA shall serve as the City Manager and shall be vested with the powers, duties and responsibilities set forth in Section 2-86 of the Hemet Municipal Code, as may be amended from time to time, the terms of which are incorporated herein by reference. It is the intent of the City Council for the City Manager to function as the chief executive officer of CITY’s organization. Without additional compensation, NAKAMURA shall provide such other services as are customary and appropriate to the position of City Manager, including serving as the Executive Director of the Hemet Redevelopment Agency and Hemet Housing Authority, together with such additional services assigned from time to time by the City Council as may be consistent with California law and the Hemet Municipal Code. NAKAMURA shall devote his best efforts and full-time attention to the performance of these duties.

1.5 **Hours of Work.** NAKAMURA shall devote the time necessary to adequately perform his duties as City Manager. The parties expect that a minimum of forty (40) hours per week during regular business hours, as well as additional time outside of the normal business hours, will be required to satisfy this requirement. Toward that end, NAKAMURA shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides adequate availability to the City Council, CITY staff, and members of the community during normal CITY business hours and for the performance of his duties and of CITY business. The position of City Manager shall be deemed an exempt position under California wage and hour law. NAKAMURA’s compensation (whether salary or benefits or other allowances) is not based on hours worked and NAKAMURA shall not be entitled to any compensation for overtime.

1.6 **Regional and Professional Activity.** The City Council desires NAKAMURA to be reasonably active in national, statewide, regional and professional organizations that will contribute to City Manager’s professional development and standing and that will contribute to the advancement of the CITY’s interests and standing. Toward that end, NAKAMURA may, upon advance notice to the City Council, undertake such activities as are directly related to his

professional development and that advance the interests and standing of the CITY. These activities may include, without limitation, participation in the California League of Cities, ICMA, or other similar national, statewide, regional or professional organizations, and periodic teaching assignments of limited duration at institutions of higher learning or professional instruction located in Southern California, provided that such activities do not in any way interfere with or adversely affect his employment as City Manager or the performance of his duties as provided herein. CITY agrees to budget and pay for the dues and subscriptions of the City Manager necessary for his participation in national, statewide, regional or professional organizations. CITY agrees to reimburse, as provided in Section 1.8 [Reimbursement] of this Agreement, NAKAMURA'S reasonable and necessary travel, business and subsistence expenses for the activities described herein, except for the periodic teaching assignments described above which shall be undertaken at NAKAMURA's own expense.

1.7 **Other Activity.** In accordance with Government Code Section 1126, during the period of his employment, NAKAMURA shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity (except as permitted under Section 1.6 [Regional and Professional Activity]), whether or not to pecuniary advantage, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the CITY, or that otherwise might interfere with the business or operation of the CITY or the satisfactory performance of NAKAMURA'S duties as City Manager.

1.8 **Reimbursement.** CITY shall reimburse NAKAMURA for reasonable and necessary travel, subsistence and other business expenses incurred by NAKAMURA in the performance of his duties. All reimbursements shall be subject to and in accordance with California law and the CITY's adopted Employee Reimbursement Policy.

2. **Compensation.**

2.1 **Base Salary.** NAKAMURA shall receive an annual base salary of Two Hundred and Fifteen Thousand Dollars and No Cents (\$215,000.00) paid according to the payroll schedule in place for CITY employees paid bi-weekly.

2.1.1 **Temporary 2% reduction.** For fiscal year 2011-2012, commencing on the pay period of July 25, 2011, NAKAMURA shall participate in the CITY's budget reduction program by decreasing his base salary by two percent (2%) to two hundred ten thousand, seven hundred dollars and zero cents (\$210,700.00). This temporary salary reduction shall remain in effect through June 30, 2012. NAKAMURA's base salary shall be automatically reinstated to the level provided in Section 2.1 [Base Salary] commencing July 1, 2012.

2.2 **Merit Increase.** On or about the anniversary of the Commencement Date and after the performance evaluation provided in Section 2.2.1 [Evaluation], the City Council, in its sole discretion, may award NAKAMURA a merit increase in compensation, including, but not limited to, increased base annual salary and/or benefits. Any and all adjustments to NAKAMURA'S compensation will be obtained through negotiation with the City Council and are not governed by CITY's Personnel Policies.

2.2.1 **Evaluation.** Annually, the City Council will review and evaluate the performance of NAKAMURA as City Manager. Review and evaluation shall be in accordance with specific written criteria developed jointly by City Council and NAKAMURA, within ninety (90) days following the Commencement Date. NAKAMURA and the City Council shall mutually define goals and performance objectives, including priorities, as they determine necessary for the proper operation of CITY and the attainment of the CITY's policy objectives. Failure of the CITY to provide a performance evaluation shall not limit the CITY's ability to terminate this Agreement pursuant to Section 5 [Termination].

2.3 **Deferred Compensation.** During the period of employment, NAKAMURA shall be entitled to participate in CITY's deferred compensation programs (the 457 plan and the 401A plan) provided CITY continues to maintain these plans for CITY employees. CITY agrees that it will contribute to the 457 plan on NAKAMURA'S behalf the maximum allowable contribution as provided under U.S. Internal Revenue Service regulations, as may be amended from time to time. It is the understanding of the parties that such maximum contribution for NAKAMURA is currently Sixteen Thousand Five Hundred Dollars and No Cents (\$16,500.00) per year. In the event that the IRS should modify the existing regulations in a manner that materially changes the amount that may be contributed, the parties agree to meet and confer and negotiate in good faith the appropriate contribution by CITY to the 457 plan.

2.4 **Benefits.**

2.4.1 **Health Insurance.** CITY agrees that during the period of employment it will make available to NAKAMURA and his eligible dependents the CITY health insurance capped at \$953.81, and fully paid dental and vision. NAKAMURA agrees to pay the remaining portion of such premium payments through regular payroll deductions from NAKAMURA's base salary.

2.4.2 **Life Insurance.** CITY agrees that during the period of employment it will provide NAKAMURA with, and pay the annual premiums for, a term life insurance policy in an amount equal to two times (2x) NAKAMURA'S base salary set forth in Section 2.1.

2.4.3 **Long-Term Disability Insurance.** CITY agrees that during the period of employment it will pay one hundred percent (100%) of the premium payments applicable to, and to otherwise permit NAKAMURA to participate in, the CITY's long-term disability insurance with a sixty percent (60%) of base salary benefit, with a maximum monthly benefit of eleven thousand six hundred dollars and 00/100 (\$11,600.00), and with a thirty-day (30) waiting period following illness/injury qualifying period. CITY does not provide short-term disability benefits.

2.4.4 **Gym Program.** During the period of employment, NAKAMURA is eligible to participate in the CITY's Gym Program and utilize the CITY designated gym facilities in accordance with the guidelines established for such program.

2.4.5 **Employee Assistance Program.** During the period of employment, NAKAMURA and his eligible dependents are eligible to participate in the CITY's Employee Assistance Program in accordance with the guidelines established for such program.

2.5 **City-Owned Vehicle.** CITY shall provide NAKAMURA a vehicle for his exclusive use in the performance of his duties. Such use shall include personal use reasonably related to the performance of his duties such as travel to and from work. CITY shall pay for, or reimburse NAKAMURA for, the necessary cost of automobile registration, insurance, fuel and maintenance for the vehicle. NAKAMURA shall be entitled to no other or further vehicle allowance. NAKAMURA shall keep the vehicle in reasonable repair, shall obey all traffic laws relating to operation of the vehicle and shall use due care and caution in its operation.

2.6 **Jury Duty.** The City Manager will receive full pay and benefits while responding to a jury summons or serving on a jury, provided that such jury duty does not exceed fifteen (15) business days. Any compensation for such jury duty (except travel pay) shall be remitted to CITY.

2.7 **Business Related Equipment.** CITY shall supply NAKAMURA with a cell phone, and such personal data device as is currently in use within the city (e.g. blackberry, PDA or similar device), and if requested by NAKAMURA, a portable computer (inclusive of office docking station) for NAKAMURA's exclusive business use. In addition, at NAKAMURA'S option, and in recognition of the fact NAKAMURA may be required to perform job related duties outside the office and/or his home, City agrees that it will provide either a CITY owned computer for CITY business conducted at his home or such upgrades as are necessary to his personal computer system in order to maintain compatibility with CITY owned and operated technology and systems.

3. **Vacation and Leave.**

3.1 **Personal Time Off.** NAKAMURA shall maintain his balance of accrued Personal Time Off (PTO) and remain eligible to accrue PTO at a total of 256 hours per year, comprised of the following: 168 hours of vacation; 40 hours of management leave; and 48 hours of sick leave (separate from 3.4 Sick Leave below). The payroll period rate of PTO shall accrue at a rate of 10.67 hours per payroll period. The maximum amount of PTO that NAKAMURA may have at any time shall equal 512 hours. If NAKAMURA's earned but unused PTO reaches 512 hours, NAKAMURA will stop accruing PTO until the PTO falls below 512 hours. PTO will not be earned during the period in which NAKAMURA's benefits are at such maximum amount. Upon approval of the Mayor and concurrence of the Finance Director and City Attorney, NAKAMURA may sell back earned but unused PTO once each quarter up to a maximum of 176 hours per calendar year. NAKAMURA shall be paid the value of any earned and unused PTO at the time of separation of employment for any reason, at the base salary rate, as defined in section 2.1.

3.1.1 **PTO Sell Back Moratorium.** NAKAMURA waives his ability to sell back PTO throughout the 2011-12 fiscal year.

3.2 **Holidays.** Paid holidays shall be in accordance with the CITY's current practices and are subject to change. Paid holidays will be those deemed authorized by the CITY. The CITY currently provides twelve (12) paid holidays, including two (2) floating paid holidays. The hour value of each holiday shall be equivalent to NAKAMURA's scheduled work day.

3.3 **Administrative Leave.** In addition to the paid leave described in 3.1 above, NAKAMURA shall be entitled to twenty (20) hours of administrative leave as of the

Commencement Date. Thereafter, NAKAMURA shall be entitled to forty (40) hours of administrative leave on January 1 of each calendar year following the Commencement Date in consideration of being required to attend City Council meetings. Such annual grant of administrative leave must be used by December 31 of the calendar year in which it is granted. Granted and unused administrative leave shall not be carried over into the following year. No compensation shall be provided for granted and unused administrative leave and such granted and unused administrative leave shall not be paid out to NAKAMURA at the time of separation from employment. Unused administrative leave shall not be converted into PTO.

3.4 **Sick Leave.** In addition to the paid leave described in 3.1 above, NAKAMURA shall accrue sick leave at a rate of four (4) hours per month. There is no cap on the amount of sick leave that NAKAMURA may accrue or carry over from year to year. CITY agrees that upon NAKAMURA's retirement, disability, death or termination under Sections 5.1 [By CITY Not for Cause] or 5.2 [By Employee], CITY will purchase NAKAMURA's accrued and unused sick leave at a value of twenty-five percent (25%) after five (5) years of service, fifty percent (50%) after ten (10) years of service, or seventy-five percent (75%) after twenty (20) years of service with CITY. The CITY shall purchase such accrued and unused sick leave at NAKAMURA's base salary rate, as defined in section 2.1, at the time of such payout.

4. **Retirement.**

4.1 **CalPERS.** The City will maintain its current retirement plan with the State of California's Public Employees Retirement System ("CalPERS") for NAKAMURA, and such plan will include 2.7% at fifty-five (55) plan (Fourth Level 1959 Survivor's Benefits, Post-Retirement Survivor Allowance, One-Year Final Compensation, Military Service Credit). City will contribute the employee's contributive share to CalPERS at the rate of five percent (5%). NAKAMURA will contribute three percent (3%) of the employee's share of his CalPERS contribution. City will report to CalPERS as special compensation the value of employer-paid contributions. The special compensation shall be calculated on the base rate and reported as non-taxable to CalPERS. City has further implemented the provisions of Government Code Section 20636(c)(4) pursuant to Section 20691 by means of Resolution No. 3099, adopted June 14, 1994.

5. **Termination.**

5.1 **By City Not for Cause.** Except as is provided in Section 5.1.1 below, CITY may terminate NAKAMURA for any reason, and at any time, with or without cause, by providing NAKAMURA ninety (90) days prior written notice thereof and nine (9) month's base salary, less applicable deductions, plus applicable accrued PTO and sick leave as provided herein together with any extension of benefits required under California law. CITY may dismiss NAKAMURA notwithstanding anything to the contrary contained in or arising from any Personnel Policies or past CITY practices relating to the employment, discipline, or termination of its employees.

5.1.1 **Termination After Seating of New Councilmember.** NAKAMURA may not be terminated, except for cause, within ninety (90) days of the seating of a new CITY Councilmember.

5.2 **By Employee Not for Cause.** NAKAMURA may terminate his employment for any reason, and at any time, with or without cause, by providing CITY with ninety (90) days advance written notice. CITY shall have the option, in its complete discretion, to make NAKAMURA'S termination effective at any time prior to the end of such period, provided CITY pays NAKAMURA all compensation due and owing him through the last day actually worked, plus an amount equal to the base salary NAKAMURA would have earned through the balance of the above notice period.

5.3 **By City for Cause.** CITY may immediately terminate this Agreement at any time by providing NAKAMURA written notice of his termination for cause. No severance or any further salary shall be paid in the event NAKAMURA'S employment is terminated for cause except for accrued and unutilized PTO and sick leave as provided for in this Agreement. For purposes of this Agreement, cause for termination shall include but not be limited to the following: theft or attempted theft; material dishonesty; willful or persistent material breach of duties; engaging in unlawful discrimination or harassment of employees or any third party while on CITY premises or time; conviction of a felony; engaging in conduct tending to bring embarrassment or disrepute to the CITY and unauthorized absences. NAKAMURA expressly waives any rights provided for Administrative Personnel under the CITY's Personnel Policies, any rights provided for the City Manager or Administrative Personnel under the Hemet Municipal Code or under State or Federal law to any form of pre or post-termination hearing, appeal, or other administrative process pertaining to termination, except when NAKAMURA has a California or federal constitutional right to a name clearing hearing.

5.4 **Termination Obligations.** NAKAMURA agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of NAKAMURA'S employment. NAKAMURA'S obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

5.5 **Benefits Upon Termination.** All benefits to which NAKAMURA is entitled under this Agreement shall cease upon NAKAMURA'S termination in accordance with this Section 5, unless expressly continued either under this Agreement, under any specific written policy or benefit plan applicable to NAKAMURA, or unless otherwise required by law.

6. **Proprietary Information.**

"Proprietary Information" is all information and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of CITY in the course of his or her employment or otherwise produced or acquired by or on behalf of CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, NAKAMURA shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY

and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, NAKAMURA shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. NAKAMURA'S obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

7. Conflict Of Interest.

NAKAMURA represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

8. General Provisions.

8.1 Vehicle Operation. NAKAMURA shall operate any vehicle used in connection with the performance of his duties as City Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment.

8.2 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and or at the last known address maintained in NAKAMURA'S personnel file. NAKAMURA agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address:

City of Hemet
c/o Mayor and City Attorney
445 E. Florida Avenue
Hemet, California 92543
Attn: Mayor and City Council

City Manager's Address: [Deliver to last updated address in personnel file]

8.3 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] the CITY will indemnify, defend, and hold NAKAMURA harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during NAKAMURA'S tenure as City Manager.

8.4 Bonding. The CITY shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

8.5 **Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of NAKAMURA'S employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of NAKAMURA, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to NAKAMURA and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

8.6 **Amendments.** This Agreement may not be amended except in a written document signed by NAKAMURA, approved by the City Council and signed by CITY's Mayor.

8.7 **Waiver.** Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

8.8 **Assignment.** NAKAMURA shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to NAKAMURA, assign its rights and obligations hereunder.

8.9 **Severability.** If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

8.10 **Attorneys' Fees.** In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

8.11 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Riverside County, State of California.

8.12 **Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

8.13 **Acknowledgment.** NAKAMURA acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and NAKAMURA has signed and executed this Agreement, as of the date first indicated above.

CITY MANAGER

CITY OF HEMET

Brian S. Nakamura

Gerald Franchville, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney