



AGENDA

ADJOURNED REGULAR MEETING OF THE HEMET CITY COUNCIL

December 18, 2012

REGULAR SESSION

11:30 a.m.

City of Hemet Council Chambers

450 E. Latham Avenue

Call to Order

Roll Call

ROLL CALL: Council Members Krupa, Milne and Wright, Mayor Pro Tem
Smith and Mayor Youssef

Invocation

Pledge of Allegiance

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

1. **At-Will Employment Agreement for the position of Interim City Manager**
 - a. Approve an Employment Agreement for the position of Interim City Manager between the City of Hemet and Ronald Bradley

2. **At-Will Employment Agreement for the position of Assistant City Manager**
 - a. Approve an Employment Agreement for the position of Assistant City Manager between the City of Hemet and Mark Orme.
-

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.

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, January 8, 2013 at 7:00 p.m. for considerations of items placed on that agenda. The next regular meeting will be held January 22, 2013.

Staff reports and other disclosable public records related to open session agenda items are available at the City Clerk's Office or at the public counter located at 445 E. Florida Avenue during normal business hours.

AGENDA # 1



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

DATE: December 18, 2012

RE: Approval of At-Will Employment Agreement for the position of Interim City Manager

RECOMMENDED ACTION:

That the City Council approves the attached employment agreement between the City of Hemet and Ronald Bradley.

BACKGROUND:

At the December 11th, 2012 Council Meeting the City Council, in closed session, approved appointment of Ronald Bradley to the position of Interim City Manager and directed staff to return with a contract for approval at the December 18th, 2012 Council Meeting.

CalPERS allows for CalPERS annuitants (retirees) to work for CalPERS agencies on a temporary basis for no longer than 960 hours per fiscal year as long as recruitment for a permanent appointment to the position is underway. Additionally, CalPERS requires that the annuitant have special skills necessary to fill the position on an interim basis to prevent the stoppage of public business. Mr. Bradley, by virtue of his significant experience as both a City Manager and an Interim City Manager in other cities, has those special skills required to fill the position until a recruitment of a permanent City Manager can be completed.

FISCAL IMPACT:

The position of City Manager has been included in the FY 2012-2013 Adopted Budget. Additionally, savings will be generated from the vacancy of the Assistant City Manager position from August to December.

Attachment(s): Employment contract between the City of Hemet and Mark Orme

**EMPLOYMENT AGREEMENT
For the Position Of
INTERIM CITY MANAGER**

This Employment Agreement (“Agreement”) is made and entered into this 18th day of December, 2012, by and between the CITY OF HEMET (“CITY”), a California municipal corporation and general law city, and RONALD BRADLEY (“BRADLEY”), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the services of BRADLEY as its Interim City Manager, temporarily, to carry out the duties and responsibilities of City Manager as provided in the Hemet Municipal Code, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement. CITY further desires to employ the services of BRADLEY to structure and oversee an appropriate professional executive search and to assist the CITY with a statewide executive management recruitment to fill the position of City Manager on a regular basis.

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

C. BRADLEY represents that he is a retired annuitant of CalPERS within the meaning of Government Code § 21221(h) and acknowledges that he is restricted to working no more than 960 hours for CITY, a state agency or other CalPERS contracting agencies (collectively “CalPERS Agencies”) during CITY’s 2012-2013 fiscal year, or for any additional or subsequent fiscal year, and that his compensation is statutorily limited as provided in Government Code § 21221(h). BRADLEY represents that he has not worked for any CalPERS Agencies during the CITY’s 2012-2013 fiscal year, or received unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement.

D. CITY has determined that it is necessary to hire BRADLEY, a retired annuitant, because the position of Interim City Manager requires special skills, and BRADLEY, by virtue of his significant experience as both city manager and interim city manager in other cities, has those special skills, and that it is necessary to hire BRADLEY to ensure there is no stoppage of public business.

OPERATIVE PROVISIONS

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

1. Position and Duties.

1.1 Position. BRADLEY accepts employment with CITY as its Interim City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. BRADLEY shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that BRADLEY, as the Interim City Manager, shall keep the City Council fully apprised of all significant ongoing operations of CITY. Toward that end,

BRADLEY 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 CITY.

1.2 Term. The term of this Agreement shall commence upon being executed by BRADLEY and approved by the City Council and executed by CITY's Mayor ("Commencement Date"). BRADLEY shall commence the performance of his duties as the Interim City Manager on December 18, 2012, or at such other date as the parties hereto shall agree in writing. This Agreement shall expire as of the first of the following to occur: (i) 5:00 p.m. on Friday, June 28, 2013; (ii) upon the employment commencement date of a permanent City Manager employed by CITY; (iii) upon BRADLEY working his 960th hour for CITY including hours worked for other CalPERS Agencies during CITY's 2012-2013 fiscal year, or for any additional or subsequent fiscal year; or (iv) upon termination of the Agreement by either BRADLEY or CITY as provided in Section 4 [Termination] of this Agreement.

1.2.1 Extension of Term. Notwithstanding Section 1.2, the parties may, by mutual written agreement, extend the term of this Agreement by such period or periods agreed upon by the parties, in compliance with Section 7.14 of the Agreement and approval by CalPERS.

1.3 At-Will. BRADLEY acknowledges that he is an at-will, temporary 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 CITY's personnel rules, policies, procedures, ordinances, resolutions, memorandums of understanding, or collective bargaining agreements, including without limitation CITY Resolution 3838, and subsequent Resolutions, regarding City Administrative Personnel (collectively "Personnel Policies") shall not apply to BRADLEY, and nothing in this Agreement is intended to, or does, confer upon BRADLEY 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 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of BRADLEY, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of BRADLEY to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and BRADLEY, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Duties. BRADLEY shall serve as the Interim City Manager and shall be vested with the powers, duties and responsibilities of the City Manager as 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 Interim City Manager to function as the chief executive officer of CITY's organization. In addition, BRADLEY shall structure and oversee an appropriate professional executive search and assist the CITY with a statewide executive management recruitment to fill the position of City Manager on a regular basis. Without additional compensation, BRADLEY shall provide such other services as are customary and appropriate to the position of Interim City Manager, including serving as the Interim Executive Director of the

Successor Agency to 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. BRADLEY shall devote his best efforts and full-time attention to the performance of these duties.

1.5 Hours of Work. BRADLEY shall devote the time necessary to adequately perform his duties as Interim City Manager. The parties anticipate that BRADLEY will work approximately forty (40) hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings, attendance at activities of Directed Organizations (as defined below), and attendance at such community events and CITY functions as the Council may direct. Toward that end, BRADLEY shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides reasonable availability to the City Council, CITY staff, and members of the community during regular CITY business hours and for the performance of his duties and of CITY business. However in no event shall BRADLEY be required to work in excess of 960 hours for City including hours worked for other CalPERS Agencies during CITY's 2012-2013 fiscal year. The position of Interim City Manager shall be deemed an exempt position under California wage and hour law. BRADLEY's compensation (whether salary or benefits or other allowances) is not based on hours worked and BRADLEY shall not be entitled to any compensation for overtime.

1.6 Regional and Professional Activity. The City Council desires BRADLEY to be reasonably active in statewide, regional and/or local organizations as indicated by the City Council that are deemed necessary to maintain and contribute to the advancement of CITY's interests and standing ("Directed Organizations"). CITY agrees to budget and pay for the dues and subscriptions of the Interim City Manager necessary for his participation in the Directed Organizations. CITY agrees to reimburse, as provided in Section 2.3.3 [Reimbursement] of this Agreement, BRADLEY's reasonable and necessary travel, business and subsistence expenses for the activities related to the Directed Organizations. In addition, BRADLEY may request permission from the City Council to participate in other professional and community activities including, 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 are undertaken on his own time, do not in any way interfere with or adversely affect his employment as Interim City Manager or the performance of his duties as provided herein, and are undertaken as his sole expense.

1.7 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, BRADLEY 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 CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of BRADLEY's duties as Interim City Manager.

2. Compensation.

2.1 Rate of Pay. For all services performed by BRADLEY as the Interim City Manager under this Agreement, CITY shall pay BRADLEY compensation at the rate of FOUR THOUSAND ONE HUNDRED THIRTY-FOUR dollars and 80/100th cents (\$4,134.80) per week according to the payroll schedule in place for CITY employees paid bi-weekly subject to the limitations provided below.

2.1.1 Compliance with CalPERS requirements. It is the intent of the parties to compensate BRADLEY only to the extent permitted under Government Code § 21221(h) and corresponding CalPERS regulations and policy statements. The Rate of Pay set forth above is based on the salary limitations established by CalPERS and is calculated by taking the maximum monthly base salary paid to the prior City Manager as listed on a publicly available pay schedule for the position of City Manager (\$17,916.66) divided by 173.333 to equal an hourly rate (\$103.37). Because BRADLEY is a salaried, nonexempt employee, this hourly rate is utilized for the sole purpose of establishing the weekly salary based on an anticipated forty (40) hour work week or \$4,134.80 per week. In no event shall compensation paid to BRADLEY by CITY under this Agreement exceed NINETY-NINE THOUSAND, TWO HUNDRED THIRTY-FIVE dollars and 20/100th cents (\$99,235.20).

2.1.2 Recordation and Reporting of Hours Worked. BRADLEY will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS.

2.2 Benefits.

2.2.1 No Benefits. Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, BRADLEY shall not receive from CITY any benefits CITY commonly provides to its employees, including without limitation health, dental, or vision insurance coverage, life insurance, gym programs, employee assistance programs, and similar benefits. However, City will make such program available to BRADLEY to join, at his sole election and at his sole expense.

2.3 Business Related Expenses and Equipment.

2.3.1 City-Owned Vehicle. CITY shall assign and provide to BRADLEY a CITY vehicle for his exclusive use in the performance of his duties under this Agreement. 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 BRADLEY for, the necessary cost of automobile registration, insurance, fuel and maintenance for the vehicle. BRADLEY shall be entitled to no other or further vehicle allowance. BRADLEY 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.

2.3.2 Business Related Equipment. CITY shall supply BRADLEY 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 BRADLEY, a portable computer (inclusive of office docking station) for BRADLEY's exclusive business use. In addition, at BRADLEY's option, and in recognition of the fact BRADLEY may be required to perform job related duties outside the office and/or his home, CITY agrees that it will provide BRADLEY with a CITY owned computer or lap top for CITY business conducted off site.

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

3. Vacation and Leave.

3.1 **No Leave.** BRADLEY and CITY agree that BRADLEY, in accordance with Government Code Section 21221(h) and related CalPERS regulations and policy statements shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

4. Termination.

4.1 **By CITY.** This Agreement may be terminated by CITY for any reason seven (7) days after notice in writing to BRADLEY of such termination. CITY's only obligation in the event of such termination will be payment to BRADLEY of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 **By BRADLEY.** This Agreement may be terminated by BRADLEY for any reason seven (7) days after notice in writing to CITY of such termination. CITY shall have the option, in its complete discretion, to make BRADLEY's termination effective at any time prior to the end of such period, provided CITY pays BRADLEY all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

4.3 **No Notice for Expiration.** Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 **Termination Obligations.** BRADLEY 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 BRADLEY's employment. BRADLEY's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

4.5 **Benefits Upon Termination.** All benefits to which BRADLEY is entitled under this Agreement shall cease upon BRADLEY's termination in accordance with this Section 4, unless

expressly continued either under this Agreement, under any specific written policy or benefit plan applicable to BRADLEY, or unless otherwise required by law.

5. 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/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, BRADLEY 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, BRADLEY shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. BRADLEY’s obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

6. Conflict Of Interest.

BRADLEY 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.

7. General Provisions.

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. BRADLEY shall operate any vehicle used in connection with the performance of his duties as Interim 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.

7.3 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 BRADLEY’s personnel file. BRADLEY 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
445 E. Florida Avenue
Hemet, California 92543
Attn: Mayor and City Council

Interim City Manager's Address:

Ronald E. Bradley
30348 Via Canada
Temecula, CA 92592

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] CITY will indemnify, defend, and hold BRADLEY 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 BRADLEY's tenure as Interim City Manager.

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

7.6 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of BRADLEY'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 BRADLEY, 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 BRADLEY and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

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

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

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

7.10 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.

7.11 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.

7.12 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.

7.13 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.

7.14 Acknowledgment and Agreement to Obtain CalPERS Review. BRADLEY 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. CITY and BRADLEY further mutually agree that should the parties determine that it will be necessary to continue this Agreement beyond the 2012-2013 fiscal year to complete the duties set forth in Section 1.4, CITY and BRADLEY shall jointly submit this Agreement for review by CalPERS prior to July 1, 2013, to ensure that BRADLEY's status as a retired annuitant with CalPERS will not be jeopardized in continuing to perform the services set forth in this Agreement. The parties agree that BRADLEY has no obligation to perform services under this agreement in fiscal year 2013-2014 unless and until CalPERS approves or otherwise authorizes such work.

IN WITNESS WHEREOF, 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 BRADLEY has signed and executed this Agreement, as of the date first indicated above.

INTERIM CITY MANAGER

CITY OF HEMET

Ronald E. Bradley

Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney

AGENDA # 2



Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

DATE: December 18, 2012

RE: Approval of At-Will Employment Agreement for the position of Assistant City Manager

RECOMMENDED ACTION:

That the City Council approves the attached employment agreement between the City of Hemet and Mark Orme.

BACKGROUND:

At the December 11th, 2012 Council Meeting, the City Council, in closed session, authorized the City Attorney to negotiate the terms of the employment agreement with Mark Orme as Assistant City Manager and return to Council on the meeting of December 18th, 2012 with an agreement for approval.

FISCAL IMPACT:

The position of Assistant City Manager has been included in the FY 2012-2013 Adopted Budget. Additionally, savings from the position previously having been vacant from August to December will generate expenditure savings.

Attachment(s): Employment contract between the City of Hemet and Mark Orme

**EMPLOYMENT AGREEMENT
AMENDED AND RESTATED
For the Position of
ASSISTANT CITY MANAGER**

This Employment Agreement (“Agreement”) is made and entered into this 24th day of April, 2012, by and between the CITY OF HEMET (the “CITY”), a California municipal corporation and general law city, and Mark Orme (“ORME”), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the services of ORME as Assistant City Manager of CITY, (“Assistant City Manager”) in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. ORME desires to accept at-will employment as Assistant City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. CITY and ORME have agreed that this Amended and Restated Agreement will supersede the Employment Agreement for the Position of Interim City Manager, entered into by and between CITY and ORME, on August 21, 2012, 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.** ORME accepts employment with the CITY as its Assistant City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. ORME shall provide service at the direction and under the supervision of the City Manager. It is the intent of the parties that the Assistant City Manager shall supervise City departments as directed by the City Manager and shall keep the City Manager fully apprised of all significant ongoing operations of the City departments. Toward that end, ORME shall report directly to the City Manager and will periodically, or as may be specifically requested by the City, provide status reports to the City Manager on his activities and those of the City departments.

1.2 **Period of Employment/Commencement Date.** ORME shall serve for an indefinite term subject to the provisions contained in this Agreement concerning termination of his services or voluntary separation from service. This Agreement commences and is effective on December 18th, 2012 (“Commencement Date”), upon being executed by ORME and the Mayor and approved by the City Council. For purposes of Section 3.4 [Sick Leave] only, ORME’s start date of service as a temporary employee is November 1, 1999, with Full Time employment commencing on March 24, 2000 (“Start Date of Service”).

1.3 **At-Will.** ORME acknowledges that he is an at-will employee of CITY who shall serve at the pleasure of the City Manager at all times during the period of employment. The terms of the CITY's personnel rules, policies, procedures, ordinances, or resolutions (collectively "Personnel Policies") shall not apply to ORME to the extent such Personnel Policies conflict with this Agreement. Nothing in this Agreement is intended to, or does, confer upon ORME 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 Manager to terminate his employment, except as is expressly provided in Section 6 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of ORME as provided in Section 6 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of ORME to resign at any time from this position with CITY, subject only to the provisions set forth in Section 6 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and ORME, as set forth in Section 6 [Termination] below.

1.4 **Duties.** ORME shall serve as the Assistant City Manager and shall report directly to the City Manager. ORME, as the Assistant City Manager, shall be vested with the powers, duties and responsibilities set forth in both the Hemet Municipal Code and the attached job description, as both may be amended from time to time, the terms of which are incorporated herein by reference. Without additional compensation, ORME shall provide such other services as are customary and appropriate to the position of Assistant City Manager, together with such additional services assigned from time to time by the City Council of CITY as may be consistent with California and federal law and the Hemet Municipal Code. Material changes to ORME's job duties will permit a reopening of this Agreement within thirty (30) days following such changes. ORME shall devote his best efforts and full-time attention to the performance of these duties.

1.5 **Hours of Work.** ORME shall devote the time necessary to adequately perform his duties as Assistant 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, ORME shall be allowed reasonable flexibility in setting his own office hours, based upon a regular five-day workweek, provided the schedule of such hours provides adequate availability to the City Manager and/or the City Manager's designee, CITY staff, and members of the community during normal business hours and for the performance of his duties and of CITY business. The position of Assistant City Manager shall be deemed an exempt position under the Fair Labor Standards Act. ORME's compensation (whether salary or benefits or other allowances) is not based on hours worked and ORME shall not be entitled to any compensation for overtime.

1.6 **Regional and Professional Activity.** During the period of employment, the CITY desires ORME to be reasonably active in national, statewide, regional and professional organizations that will contribute to Assistant City Manager's professional development and standing and that will contribute to the advancement of the CITY's interests and standing. Toward that end, ORME may, upon advance notice to and approval of the City Manager, undertake such activities as are directly related to his professional development and that advance the interests and standing of the CITY, provided that such activities do not in any way interfere with or adversely affect his employment as Assistant City Manager or the performance of his duties as provided herein. Participation in such

activities shall be subject to the constraints of the CITY's adopted budget. CITY agrees to budget and pay for the dues and subscriptions of the Assistant City Manager necessary for his participation in such organizations subject to the approval of the City Manager. CITY agrees to reimburse ORME's reasonable and necessary travel, business and subsistence expenses for his activities as provided in Section 1.8 [Reimbursement] of this Agreement.

1.7 **Other Activity.** During the period of his employment, ORME shall not, except with the express prior written consent of the City Manager, accept 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 for 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 ORME's duties as Assistant City Manager .

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

2. Compensation.

2.1 **Base Salary.** ORME shall receive an annual base salary of one hundred eighty thousand dollars and 00/100 (\$180,000.00) paid according to the payroll schedule in place for CITY employees paid bi-weekly.

2.2 **Merit Increase.** On or about the anniversary date of ORME's Commencement Date as stated in Section 1.2 [Period of Employment/Commencement Date] and after the performance evaluation provided in Section 4 [Evaluation], the City Manager, in his sole discretion, may award ORME a merit increase in base annual salary. Any and all adjustments to ORME's compensation will be obtained through negotiation with the City and are not governed by CITY's Personnel Policies.

2.3 **Deferred Compensation.** During the period of employment, ORME shall be entitled to participate in, and CITY shall contribute to, the 457 deferred compensation program for ORME at a rate of two percent (2%) of monthly salary on a monthly basis provided CITY continues to maintain this plan for CITY employees. ORME is eligible to contribute up to the combined plan annual limits for the deferred compensation program.

2.4 Benefits.

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

2.4.2 **Life Insurance.** CITY agrees that during the period of employment it will provide ORME with, and pay one hundred percent (100%) of the premium payments for, a term life insurance policy in an amount equal to one hundred percent (100%) of base salary.

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 ORME 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 thirteen thousand dollars and 00/100 (\$13,000.00), 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, ORME 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, ORME and his eligible dependents are eligible to participate in the CITY's Employee Assistance Program in accordance with the guidelines established for such program.

2.4.6 **Vehicle Allowance.** During the period of employment, CITY will provide ORME a five hundred dollar and 00/100 (\$500.00) per month vehicle allowance as a fixed reimbursement for the business use of a personal vehicle. During out of area travels, while on CITY business, the CITY shall provide for fuel purchases or reimbursement at the IRS rate. ORME shall provide evidence of a liability insurance policy in an amount of not less than one hundred thousand dollars and 00/100 (\$100,000.00) naming the CITY as additional insured. The vehicle allowance shall be paid to ORME on a prorated basis per payroll check.

2.4.7 **Educational Reimbursement.** During the period of employment, ORME is eligible to participate in the CITY's tuition-reimbursement program, which covers courses taken at accredited colleges, accredited universities, correspondence courses and other institutions. Reimbursement by the CITY shall be subject to the following: the course elected must be of benefit to CITY and directly related to ORME's current duties or future employment with CITY; CITY may approve courses taken to satisfy a degree requirement provided the degree goal is in the field of ORME's current or future employment with CITY; ORME shall attend such courses during his own time and complete such courses satisfactorily with a passing grade of "C" or its numerical equivalent, or a "pass" or "credit" for the class; ORME must obtain the approval of the City Manager in writing prior to enrolling in the course; CITY's reimbursement shall include tuition, necessary books and text materials used to complete course requirements and parking fees, but shall not include travel time, mileage or other miscellaneous costs incurred by ORME; upon completion of the course, ORME shall attach his grade report and receipts for eligible reimbursements to his approved application for educational assistance to the City Manager; and CITY reimbursement shall be limited to two thousand dollars and 00/100 (\$2,000.00) per calendar year. If ORME is terminated, in accordance with Section 6 [Termination] within one (1) year after completion of a course paid for by CITY, the costs of such course will be deducted from ORME's last paycheck. If such last paycheck is insufficient to repay such costs, ORME will be required to make arrangements, including a promissory note, to repay the

balance within one (1) year of such termination. The City Manager may alter the above requirements in unusual circumstances.

2.4.8 **Jury Duty.** During the period of employment, ORME will receive full pay and benefits while responding to a jury summons or serving on a jury, regardless of the time period ORME is required to participate. Any compensation for such jury duty (except travel pay) shall be remitted to CITY.

2.4.9 **Business-Related Equipment.** During the period of employment, CITY shall supply ORME with a cell phone or blackberry (or PDA or similar equipment utilized by CITY).

3. Vacation and Leave.

3.1 **Personal Time Off.** ORME 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 ORME may have at any time shall equal 512 hours. If ORME's earned but unused PTO reaches 512 hours, ORME will stop accruing PTO until the PTO falls below 512 hours. PTO will not be earned during the period in which ORME's benefits are at such maximum amount. Upon approval of the City Manager, ORME may sell back earned but unused PTO once each quarter up to a maximum of 176 hours per calendar year. ORME 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.

3.2 **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 ten (10) paid holidays, and two (2) floating paid holidays. The hour value of each holiday shall be equivalent to ORME's scheduled work day.

3.3 **Administrative Leave.** ORME shall maintain his balance of current accrued administrative leave. Such balance of current accrued administrative leave shall expire if not used by December 31st of each successive year. In addition to the paid leave described in 3.1 above, ORME shall be entitled to forty (40) hours of administrative leave upon execution of this agreement and on January 1st of each calendar year thereafter 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 ORME at the time of separation from employment. Unused administrative leave shall not be converted into PTO.

3.4 **Sick Leave.** ORME shall maintain his balance of accrued and unused sick leave. In addition to the paid leave described in 3.1 above, ORME shall accrue sick leave at a rate of four (4) hours per month. There is no cap on the amount of sick leave that ORME may accrue or carry over from year to year. CITY agrees that upon ORME's retirement, disability, death or termination under Sections 6.1 [By CITY Not for Cause] or 6.2 [By Employee], CITY will purchase ORME'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 ORME's base salary rate, as defined in section 2.1, at the time of such payout.

4. Evaluation.

Annually, the City Manager will review and evaluate the performance of ORME as Assistant City Manager. Failure of the City Manager to provide a performance evaluation shall not limit the CITY's ability to terminate this Agreement pursuant to Section 6 [Termination].

5. Retirement.

5.1 **CalPERS.** The City will maintain its current retirement plan with the State of California's Public Employees Retirement System ("CalPERS") for ORME, 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%). ORME 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.

5.2 **Retirement Health.** The CITY shall pay one hundred dollars and 00/100 (\$100.00) per month into a tax deferred account towards retirement health/dental/vision for ORME.

6. Termination.

6.1 **By CITY Not for Cause.** Except as is provided in Section 6.1.1 below, CITY may terminate ORME for any reason, and at any time, without cause by providing ORME ninety (90) days prior written notice thereof. ORME shall be entitled to two (2) months' base salary, less applicable deductions, plus applicable accrued PTO and sick leave as provided herein together with any extension of benefits required under California and federal law. CITY may dismiss ORME 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.

6.1.1 **Termination After Seating of New City Manager.** ORME may not be terminated, except for cause, within one hundred eighty (180) days of the hiring of a new City Manager.

6.2 **By Employee.** ORME may terminate his employment for any reason, and at any time, with or without cause, by providing CITY with thirty (30) days advance written notice. CITY shall have the option, in its complete discretion, to make ORME's termination effective at any time prior to the end of such period, provided CITY pays ORME all compensation due and owing him through the last day actually worked, plus an amount equal to the base salary ORME would have earned through the balance of the above notice period.

6.3 **By CITY for Cause.** CITY may immediately terminate this Agreement at any time by providing ORME written notice of his termination for cause. No severance or any further salary shall be paid in the event ORME's employment is terminated for cause except for accrued and unused PTO and sick leave as provided for in this Agreement together with any extension of benefits required under California and federal law. For purposes of this Agreement, cause for termination shall include, but not be limited to the following: theft or attempted theft; 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. ORME expressly waives any rights provided for Administrative Personnel under the CITY's Personnel Policies, any rights provided for the Assistant 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 ORME has a California or federal constitutional right to a name clearing hearing.

6.4 **Termination Obligations.** ORME 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 ORME's employment. ORME's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

6.5 **Benefits Upon Termination.** All benefits to which ORME is entitled under this Agreement shall cease upon ORME's termination, except as specified in Section 5 and 6, unless expressly continued either under this Agreement, under any specific written policy or benefit plan applicable to ORME, or unless otherwise required by law.

7. 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, ORME 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, ORME shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. ORME's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

8. Conflict Of Interest.

ORME 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.

9. General Provisions.

9.1 **Vehicle Operation.** ORME shall operate any vehicle used in connection with the performance of his duties as Assistant 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.

9.2 **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 ORME's personnel file. ORME 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 City Manager
445 E. Florida Avenue
Hemet, California 92543

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

9.3 **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 ORME 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 ORME's tenure as Assistant City Manager.

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

9.5 **Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of ORME'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 ORME, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements.

9.6 **Amendments.** This Agreement may not be amended except in a written document signed by the City Manager and ORME. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

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

9.8 **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.

9.9 **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.

9.10 **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.

9.11 **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 City Manager and ORME, 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.

9.12 **Acknowledgment.** ORME 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 City Manager, as approved by its City Council, and duly attested to by its City Clerk, and ORME has signed and executed this Agreement, as of the date first indicated above.

Mark Orme, Assistant City Manager

Robert Youssef, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah McComas, City Clerk

Eric S. Vail, City Attorney